

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed March 02, 2016, 12:00 a.m. through March 15, 2016, 11:59 p.m.

Number 2016-7
April 01, 2016

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The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Division of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at <http://www.rules.utah.gov/publicat/bulletin.htm>. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. Additional rulemaking information and electronic versions of all administrative rule publications are available at <http://www.rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.

I. Utah. Division of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for Public Meeting on Rulemaking for Rule R414-10A

The Division of Medicaid and Health Financing (DMHF) will hold a public meeting to discuss proposed changes to Rule R414-10A "Transplant Services Standards". At this meeting, DMHF will hear and consider all public comments on the proposed changes before it files them for publication in the Utah State Bulletin. The agency, however, will apply a uniform time limit to all comments.

The proposed changes will update and clarify transplant requirements for Medicaid providers and Medicaid recipients that include transplant-related definitions, patient eligibility, program access, service coverage, and prior authorization.

The public meeting will be held Thursday, April 14, 2016, from 3:30 p.m. to 5:30 p.m., in Room 125 of the Cannon Health Building, 288 North 1460 West, Salt Lake City, Utah. A conference line is available for those who would like to attend the meeting by phone: 1-877-820-7831, passcode 154788#.

Individuals may email Craig Devashrayee at cdevashrayee@utah.gov. To request a copy of the proposed rule and to email comments on the proposed changes. Individuals may also send comments to the following mailing address:

*Craig Devashrayee
Bureau of Coverage and Reimbursement Policy
PO Box 143102
Salt Lake City, UT 84114-3102*

Individuals needing special accommodations to participate in this meeting should contact Craig Devashrayee, 801-538-6641 by April 11, 2016.

Health Health Care Financing, Coverage and Reimbursement Policy

Outpatient Hospital Supplemental Payments

The Division of Medicaid and Health Financing (DMHF) will submit a change to the Medicaid State Plan through [Attachment 4.19-B, SPA 16-0022-UT Outpatient Hospital Supplemental Payments](#). The purpose of this change is to update the utilization trend for State Fiscal Year 2017.

DMHF does not expect any increase or decrease in annual costs to result from this amendment.

This amendment is pending approval from the Centers for Medicare and Medicaid Services and the proposed effective date is July 1, 2016.

A copy of this change may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, PO Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of this change are also available at local county health department offices.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between March 02, 2016, 12:00 a.m., and March 15, 2016, 11:59 p.m. are included in this, the April 01, 2016, issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them ([~~example~~]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least May 2, 2016. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through July 30, 2016, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the **RULE ANALYSIS** for each rule.*

PROPOSED RULES are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

Health, Disease Control and Prevention, Environmental Services

R392-100

Food Service Sanitation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40254

FILED: 03/10/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change incorporates the most recent science on food safety, as reflected in the 2013 Food and Drug Administration (FDA) model food code which has been adopted by FDA and was approved by academia, regulatory, and industry representatives at the Conference for Food Protection. The conference meets every two years to consider changes to the model food code and sends recommendations to FDA to consider in its update of the code which occurs every four years. The current Utah rule is based on the "2009 FDA Model Food Code". Multiple formatting changes are made. Citations to authorizing statutes are updated.

SUMMARY OF THE RULE OR CHANGE: Citations to authorizing statutes now include Sections 26-1-5 and 26-1-30. These amendments update the incorporated references to the 2013 version of the FDA Model Food Code, add amendments to the incorporated reference, and introduce many formatting and grammar fixes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-30 and Section 26-1-5 and Section 26-15-2

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 2013 version of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 342, published by U.S. Department of Health and Human Services, 11/13/2013

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings at the state level. Any costs or savings will come out of existing budgets.
- ◆ **LOCAL GOVERNMENTS:** Costs or savings for local health departments are not anticipated. Any costs or savings will come out of existing budgets. There are no anticipated costs or savings for existing facilities currently in compliance with this rule.
- ◆ **SMALL BUSINESSES:** There are no anticipated additional costs for existing facilities either in or out of compliance with the amendments due to no new or additional equipment or construction required.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated additional costs for existing facilities either in or out of compliance with the amendments due to no new or additional equipment or construction required.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs or savings singular to any one person are not anticipated as the amendments will not apply to any one person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposal incorporates by reference the "2013 FDA Model Food Code" with a several changes, but only a few are substantives: 1) no wild mushrooms picked from the wild are allowed; 2) date and time marking must be consistent; and 3) those places using reduced oxygen packaging (ROP), like cook/chill, can refrigerate product at normal refrigeration temperatures for 7 days, whereas this used to require a much lower refrigeration temperature and if held for less than 48 hours the establishment is exempt from needing an HACCP plan. There is no fiscal impact on business because compliance with the amendments are a minimal expense due to no new or additional equipment or construction required.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at chrisnelson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/02/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R392. Health, Disease Control and Prevention, Environmental Services.

R392-100. Food Service Sanitation.

R392-100-1. Authority and Purpose.

(1) This rule is authorized by [Subs]Sections 26-1-5, 26-1-30~~(2)~~, and 26-15-2.

(2) This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to

safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

R392-100-2. Incorporation by Reference.

(1) ~~[The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 2009, Chapters 1 through 8, Annex 1, and Annex 2, Federal Food, Drug, and Cosmetic Act, 21, U.S.S. 342, Sec. 402 are adopted and incorporated by reference, with the exclusion of Sections 8-302.14(C)(1) and (2),(D) and (E), 8-905.40, and 8-909.20; and]The Department incorporates by reference the following:~~

~~(a) Section 402 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 342.~~

~~(b) The 2013 version of the U.S. Public Health Service, Food and Drug Administration, Model Food Code ("Model Code"), Chapters 1 through 8, Annex 1 Parts 8-6 through 8-9, with the stated exceptions and amendments set out below.~~

~~(2) [with the following additions or amendments]Exceptions to Incorporation. The following subsections of the Model Code are not incorporated into this rule:~~

~~(a) Subsection 5-203.15(B);~~

~~(b) Subsections 5-402.11(B), (C) and (D);~~

~~(c) Subsections 8-302.14(D) and (E);~~

~~(d) Subsection 8-304.11(K);~~

~~(e) Annex 1, Section 8-905.40;~~

~~(f) Annex 1, Subparagraphs 8-905.90(A)(1) and (2);~~

~~(g) Annex 1, Section 8-909.20;~~

~~(h) Annex 1, Subparagraphs 8-911.10(B)(1) and (2).~~

~~(3) The following amendments and additions to the Model Code shall be made. All other incorporated provisions remain the same.~~

~~(a) In section 1-201.10(B), Terms Defined, [insert a new paragraph after paragraph (2) under Core Item to read: "(3) 'Core Item' will also be referred to as 'non-critical' in the state rule."a specified definition is added or the definitions or its specific subsections set out in the definition are amended as follows:~~

~~(i) Core Item(1) is amended to read:~~

~~"(1) 'Core Item' also referred to as 'non-critical' means a provision in the Model Code that is not designated as a Priority Item or a Priority Foundation Item."~~

~~(ii) Food Establishment(2) is amended to add paragraph (C) to read:~~

~~"(2)(c) Catering operation which is a business entity that operates from a permitted food establishment that contracts with a client for food service to be provided to a client, the client's guests, and/or customers at a different location. A catering operation may cook or perform final preparation of food at the service location. A catering operation does not include routine services offered at the same location, or meal that are individually purchased with the exception of cash bars."~~

~~(iii) A definition of Potentially Hazardous Food is added to read:~~

~~"Potentially Hazardous Food means the same as Time/Temperature Control for Safety Food."~~

~~(iv) Priority Item(1) is amended to read:~~

~~"(1) 'Priority Item' also referred to as 'critical 1' means a provision in the Model Code whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards~~

~~associated with food borne illness or injury and there is no provision that more directly controls the hazard."~~

~~(v) Priority Foundation Item(1) is amended to read:~~

~~"(1) 'Priority Foundation Item' also referred to as 'critical 2' means a provision in the Model Code whose application supports, facilitates or enables one or more Priority Items."~~

~~[(b) In section 1-201.10 under Priority Item, replace the semicolon and the word "and" at the end of paragraph (2) with a period; replace the period at the end of paragraph (3) with "; and"; and insert a new paragraph after paragraph (3) to read: "(4) 'Priority Item' will also be referred to as 'critical 1' in the state rule."~~

~~(c) In section 1-201.10 under Priority Foundation Item, replace the semicolon and the word "and" at the end of paragraph (2) with a period; replace the period at the end of paragraph (3) with "; and"; and add a new paragraph after paragraph (3) to read: "(4) 'Priority foundation item' will also be referred to as 'critical 2' in the state rule."~~

~~[(d)b] After section [2-102.11 paragraph (17)]2-102.12, [add a new section]a new section is added to read: "[2-102-12]2-102.13 Food Employee Training. Food managers shall be trained and certified as required under Chapter 26-15a, UCA and R392-101. Food employees shall be trained in food safety as required under Section 26-15-5 and shall hold a valid food handler's card issued by a local health department."~~

~~(c) Paragraph 3-201.16(A) is amended to read:~~

~~"(A) Except as specified in paragraph (B) of this section, mushroom species picked in the wild shall not be offered for sale or service by a food establishment."~~

~~(d) Section 3-501.17 is amended to include additional paragraph (H):~~

~~"(H) A date marking system that meets the criteria stated in paragraph (A) of this section shall use one of two types of date marks, and that date mark must be used consistently throughout the food establishment. The date mark will either be of the date:~~

~~(1) before which food must be used as specified in paragraph (A) or this section; or~~

~~(2) be the date of Day 1."~~

~~(e) Subparagraph 3-501.19(B)(2) is amended to read:~~

~~"(2) Only one time marking scheme may be used, and it must be used consistently throughout the food establishment. The food shall be marked with either:~~

~~(a) the time food is removed from temperature control; or~~

~~(b) the time before which the food shall be cooked and served at any temperature if ready-to-eat, or discarded."~~

~~[(e)f] After [s]Section 4-204-123 [paragraph (B), add]a new section is added to read: [—]~~

~~"4-204.124 Restraint of Pressurized Containers.~~

~~Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over."~~

~~[(f)g] [At the end of s]Section 5-101.12, shall be amended to add: "The process shall be in accordance with the American Water Works Association (AWWA) C651-2005 for disinfection and testing."~~

~~[(g)h] [At the end of s]Section 5-202.13[; add] is deleted and replaced to read: [—]"Where the distance to the adjacent wall is closer than three pipe diameters, the air gap shall not be less than 1-1/2 inch."~~

"(A) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is greater than three times the diameter of the inlet, or greater than four times for intersecting walls, an air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 millimeters (1 inch).

(B) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is less than three times the diameter of the inlet, or less than four times for intersecting walls, and air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least three times the diameter of the water supply inlet and may not be less than 38 millimeters (1.5 inches)."

[(h)] [After the the reference to the section number "5-202.13" in section 5-203.15 paragraph (A), delete the article "a" and insert: "an American Society of Safety Engineers (ASSE)-1022".] Paragraph 5-203.15(A) is amended to read:

"(A) If not provided with an air gap as specified under Section 5-202.13, an American Society of Safety Engineers (ASSE) 1022 dual check valve with an intermediate vent shall be installed upstream from a carbonating device and downstream from any copper in the water supply."

[(i)] [After the reference to paragraph (B) in section] Paragraph 5-402.11(A) [paragraph (A), delete the coma; insert the word "and"; and delete the text, ", and (D)" that follows the reference to paragraph (C).] is amended to read:

"(A) A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed."

[(j) Delete paragraph (D) from section 5-402.11.]

(k) [Amend-s] Section 8-103.10 Modifications and Waivers is amended to read:

"8-103.10 Modifications and Waivers:]

"(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.

(B) A copy of the variance or waiver issued by the regulatory authority and the documentation required in section 8-103.11 [must be copied] shall be provided to the Utah Department of Health, Office of Epidemiology, Environmental Sanitation Program within 5 working days of issuance.

(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance."

(l) [Amend-s] Section 8-103.11 [to add] is amended to add paragraph (D) to read:

"(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active [management] managerial control of this risk factor at all times."

(m) [Amend-Section] Paragraph 8-302.14(C) is amended to read:

"A statement specifying whether the food establishment is mobile or stationary and temporary or permanent."

[(n) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F):]

[(o)] [Amend-section] Paragraph 8-304.10(A) is amended [paragraph (A)] to read:

"(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency."

[(p)] [Amend-section] Paragraph 8-401.10(A) is amended [paragraph (A)] to read:

"(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations."

[(q)] [Amend-section] Subparagraph 8-401.10(B)(2) is amended [paragraph (B) subparagraph (2)] to read:

"(2) The food establishment is assigned a less [frequent] frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction; or"

[(r)] [Amend-s] Section 8-501.10 is amended [paragraph (B)] to read:

"(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and["]

[Add a paragraph after 8-501.10 paragraph (B) to read:]

"(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703."

[(t)] [Amend-s] Annex 1, Section 8-601.10 is amended to read:

"Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions."

[(u)] [Amend-s] Annex 1, Section 8-801.30 is amended to read:

"Service is effective at the time the notice is served or when service is made as specified in [section] Paragraph 8-801-20 [paragraph (B)]."

[(v)] [Amend-s] Annex 1, Section 8-903.10 is amended to read:

"8-903.10 Impoundment of Adulterated Food Products Authorized.

(A) The impoundment of adulterated food is authorized under Section 26-15-9, UCA.

(B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption.

(C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health.

(D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is

violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping.^[2]

(E) Within the limits set in paragraphs (B), (C), and (D) of this section, the regulatory authority may impound, by use of a hold order, molluscan shellfish that are not tagged or labeled according to Paragraph 3-202.18(A) of this code. Other actions may be taken in accordance with Paragraph 3-202.18(B) of this code.

([w]u) ~~[Amend-s]~~Annex 1, Section 8-903.60 is amended to read:

"The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11."

([x]v) ~~[Amend-s]~~Annex 1, Section 8-903.90 is amended to read:

"The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated."

([y]w) ~~[Amend-s]~~Annex 1, Section 8-904.30~~[number/catchline]~~heading is amended to read:

"8-904.30 Contents of the Summary Suspension Notice."

([z]x) ~~[Amend-section]~~Annex 1, Paragraph 8-905.10~~[paragraph]~~(A) is amended to read:

"(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties."

([aa]y) ~~[Amend-s]~~Annex 1, Section 8-905.20 is amended to read:

"A response to a hearing notice or a request for a hearing as specified in section 8-905.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-905.30 paragraph (B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any."

([ab]z) ~~[Amend-section]~~Annex 1, Subparagraph 8-905.50~~[paragraph]~~(A)(1) is amended to read:

"(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:"

([ae) ~~Adopt subsections 8-905.50 paragraphs(A)(1)(a) through (e) without changes.]~~

([ad]aa) ~~[Amend-subsection]~~Annex 1, Subparagraph 8-905.50~~[paragraph]~~(A)(2) is amended to read:

"(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-905.10(C) or for matters as determined necessary by the regulatory authority."

([ae]ab) ~~[Amend-s]~~Annex 1, Section 8-905.60~~[number/catchline]~~heading is amended to read:

"8-905.60 Notice of Hearing Contents."

([af]ac) ~~[Amend-s]~~Annex 1, Section 8-905.80~~[number/catchline]~~heading is amended to read:

"8-905.80 Expeditious and Impartial Hearing."

([ag]ad) ~~[Amend-s]~~Annex 1, Section 8-905.90~~[number/catchline]~~heading is amended to read:

"8-905.90 ~~[Confidentially]~~Confidentiality of Hearing and Proceedings."

([ae) Annex 1, Paragraph 8-905.90(A) is amended to read:

~~[ah) Amend section 8-905.90 paragraph (A) to read:]~~

"(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law."

~~[(ai) Delete section 8-905.90 subparagraphs (A)(1) and (2).]~~

~~[(aj]af) Amend section 8-906.30 paragraph (B) to read:~~

"(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer:"

~~[(ak) Adopt subsection 8-906.30 paragraphs (B)(1) through (2) without changes.]~~

([al]ag) ~~[Amend-s]~~Annex 1, Section 8-907.60 is amended to read:

"Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer."

([am]ah) ~~[Amend-s]~~Annex 1, Section 8-908.20 is amended to read:

"Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review."

([an]ai) ~~[Amend-section]~~Annex 1, Subparagraphs(B)(1) and (2) are deleted and Paragraph 8-911.10~~[paragraph]~~(B) is amended to read:

"(B) Any person who violates any provision of this rule may be assessed a civil penalty as provided in section 26-23-6, UCA."

~~[(ao) Delete subparagraphs (B)(1) and (2) of section 8-911.10.]~~

([ap]aj) ~~[Amend-s]~~Annex 1, Section 8-913.10~~[number/catchline]~~headline is amended to read:

"8-913.10 Petitions, Penalties, Contempt, and Continuing Violations."

([aq]ak) ~~[Amend-section]~~Annex 1, Paragraph 8-913.10~~[paragraph]~~(B) is amended to read:~~[to replace the phrase "(designate amount)" with the phrase, "\$5,000".]~~

"In addition to any criminal fines and sentences imposed as specified in Paragraph 8-911.10, or to being enjoined as specified in Paragraph 8-912.10, a person who violates a provision of this code, any rule or regulation adopted in accordance with law related to food establishments within the scope of this code, or to any term, condition, or limitation of a permit issued as specified in Paragraphs 8-303.10 and 8-303.20 is subject to a civil penalty not exceeding \$5,000."

~~([ar]al) [Add paragraph]~~ Annex 1, Section 8-913.10~~(D)~~ is amended to add the paragraph (D) to read:

"(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order."

~~[(3) All parts of the food establishment shall be designed, constructed, maintained, and operated to meet the standards of the state construction code adopted by the Utah Legislature. A copy of the construction code is available at the office of the local building inspector.]~~

R392-100-3. Construction Standards.

(1) All parts of the food establishment shall be designed, constructed, maintained, and operated to meet the requirements of Title 15A, State Construction and Fire Codes Act.

KEY: public health, food services, sanitation

Date of Enactment or Last Substantive Amendment: [September 10, 2012]2016

Notice of Continuation: January 20, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-30(2); 26-15-2

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-307-3
General Requirements for Home and
Community-Based Services Waivers**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40244

FILED: 03/08/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify the time frame for the eligibility start date for the Home and Community-Based Services (HCBS) Waiver.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies the eligibility start date for the HCBS Waiver. It also updates a citation and makes other technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. L. No. 111-148 and Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 42 U.S.C. 1396p(f), published by Government Printing Office, 02/07/2016

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no impact to the state budget because this amendment only clarifies the eligibility start date for the HCBS Waiver and makes other technical changes. It does not affect ongoing waiver services.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide waiver services to Medicaid recipients.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment only clarifies the eligibility start date for the HCBS Waiver and makes other technical changes. It does not affect ongoing waiver services.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because this amendment only clarifies the eligibility start date for the HCBS Waiver and makes other technical changes. It does not affect ongoing waiver services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid recipient because this amendment only clarifies the eligibility start date for the HCBS Waiver and makes other technical changes. It does not affect ongoing waiver services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to business because it does not affect ongoing waiver services.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/02/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-307. Eligibility for Home and Community-Based Services Waivers.

R414-307-3. General Requirements for Home and Community-Based Services Waivers.

(1) The Department shall apply the provisions of Sec. 2404 of Pub. L. No. 111 148, Patient Protection and Affordable Care Act, which refers to applying the provisions of Section 1924 of the Social Security Act to married individuals who are eligible for home and community-based waiver services.

(2) To qualify for Medicaid coverage of home and community-based waiver services, an individual must meet:

(a) the medical eligibility criteria defined in the State Waiver Implementation Plan adopted in Rule R414-61, which applies to the specific waiver under which the individual is seeking services, as verified by the operating agency case manager;

(b) the financial and non-financial eligibility criteria for one of the Medicaid coverage groups selected in the specific waiver implementation plan under which the individual is seeking services; and

(c) other requirements defined in this rule that apply to all waiver applicants and recipients, or specific to the waiver for which the individual is seeking eligibility.

(3) The provisions found in Rule R414-304 and Rule R414-305 apply to eligibility determinations under a Home and Community-Based Services (HCBS) waiver, except where otherwise stated in this rule.

(4) The Department shall limit the number of individuals covered by an HCBS waiver as provided in the adopted waiver implementation plan.

(5) The Department adopts and incorporates by reference ~~Subsection 1917]42 U.S.C. 1396p(f), in effect February 7, 2016, [of the Social Security Act, effective January 1, 2013.]~~ An individual is ineligible for nursing facility and other long-term care services when an individual has home equity that exceeds the limit set forth in Subsection ~~[1917]1396p(f).~~

(a) The Department sets that limit at the minimum level allowed under Subsection ~~[1917]1396p(f).~~

(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group defined in the Medicaid State Plan may receive Medicaid for services other than long-term care services provided under the plan or the HCBS waiver.

(c) An individual who has excess home equity and does not qualify for a community Medicaid eligibility group, is ineligible for Medicaid under both the special income group and the medically needy waiver group.

(6) To determine initial eligibility for a Medicaid coverage group under an HCBS waiver, the eligibility agency must receive a completed waiver referral form from the operating agency or designee. ~~[Individuals]~~ An individual who ~~[are]~~is not ~~[currently]~~eligible for Medicaid must also complete a Medicaid application.

(a) The waiver referral form must verify the date the individual meets the level-~~[]~~of-~~[]~~care requirements as defined in the State Waiver Implementation Plan.

~~(b) The following provisions apply for Medicaid eligibility under the HCBS waiver:~~

~~(i[b]) [If the individual's]The eligibility agency must approve a [Medicaid]client's eligibility[is not approved] within 60 days of the level-~~[]~~of-~~[]~~care date stated on the waiver referral form[.] for the waiver referral form [is no longer]to remain valid[.]~~

~~(i) The] otherwise the operating agency or designee must submit a new waiver referral form to the eligibility agency to establish[ing] a new level-~~[]~~of-~~[]~~care date[.]~~

~~(ii) Waiver eligibility cannot begin before the level-of-care date stated on a valid waiver referral form, and;~~

~~(iii) The eligibility start date must begin within 60 days of the level-of-care date stated on the valid waiver referral form. [Eligibility for Medicaid under an HCBS waiver cannot begin before the new level of care date on the new waiver referral form, subject to the same 60-day period to approve eligibility.]~~

(c) The Medicaid agency may not pay for waiver services before the start date of the individual's approved comprehensive care plan, which may not be earlier than the date the individual meets:

(i) the eligibility criteria for a Medicaid coverage group included in the applicable waiver; and

(ii) the level-~~[]~~of-~~[]~~care date verified on a valid waiver referral form.

(7) In the event an individual is not approved for Waiver Medicaid services due to Subsection R414-307-3(6), an individual who otherwise meets Medicaid financial and non-financial eligibility criteria for a Non-Waiver Medicaid coverage group may qualify for Medicaid services other than services under an HCBS waiver.

(8) If an individual's Medicaid eligibility ends and the individual reapplies for Waiver Medicaid, the Department shall establish a process of obtaining approval from the operating agency or designee in which the individual continues to meet medical criteria for the Waiver. The operating agency or designee approval may establish a new date in which eligibility to receive coverage of waiver services may begin.

(9) An individual denied Medicaid coverage for an HCBS waiver may request a fair hearing.

(a) The Department conducts hearings on programmatic eligibility for payment of waiver services.

(b) The Department of Workforce Services conducts hearings on financial eligibility issues for a Medicaid coverage group.

KEY: eligibility, waivers, special income group

Date of Enactment or Last Substantive Amendment: [November 1, 2015]2016

Notice of Continuation: April 17, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

Health, Family Health and
Preparedness, Licensing
R432-550
Birthing Centers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40243

FILED: 03/04/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule amendment is to remove certain requirements that conflict with current statutes governing midwives and other licensed maternity practitioners. This amendment will update the entire rule and remove old clinical requirements that due, to age of the rule, no longer apply to birthing centers. Also, this amendment amends the rule's content and numbering that needs clarification, so they can be easily understood and consistently applied by providers and the Department of Health. The Health Facility Committee reviewed and approved these rule amendments on 02/24/2016.

SUMMARY OF THE RULE OR CHANGE: The rule amendment removes the requirement for a transfer agreement or admitting privileges with a hospital. It allows for all providers licensed through the Division of Occupational and Professional Licensing to provide maternity, midwifery, or obstetric care in a birthing center. It also corrects many outdated references and corrects numbering errors.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state budget will be impacted due to the licensing of birthing centers that was not previously possible. For each 2-room birthing center applying for licensure, there will be an initial licensing fee of \$1,527.50 for the first year and a renewal fee of \$1,560 every 2 years thereafter. The Department anticipates two centers licensing in FY2016 which will result in fees of \$3,055 to state revenues. The Department also anticipated two birthing centers applying for licensure per year for the next three years.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they are not involved with this process.

◆ **SMALL BUSINESSES:** There is a cost to small businesses. The birthing centers will be considered small businesses, so the licensing fees will apply as stated above.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to businesses, individuals, local governments, and persons that are not small businesses because the changes in this rule will not affect them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is a change for birthing centers that wish to be licensed. For a 2-room birthing center, there is an initial licensing fee of \$1,527.50 for the first year, and a fee of \$1,560 for license renewal every 2 years after.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be a fiscal impact on business in that birthing centers will be subject to licensing fees of approximately \$1,500; however, the change in the rule will enable the licensing of birthing centers, which were unable to obtain a license under the existing rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov
◆ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/02/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.**R432-550. Birthing Centers.****R432-550-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21.

R432-550-2. Purpose.

This rule provides health and safety standards for the organization, physical plant, maintenance and operation of birthing centers.

(1) Birthing centers shall consist of [~~at least two,~~one to [~~but not more than~~] five birth[ing] rooms. Licensure is not required for birthing centers with only one birth room.

(2) Birthing centers provide quality care and services in a pleasing and safe environment to a select low risk population of healthy maternal patients who choose a safe and cost-effective alternative to the traditional hospital childbirth experience.

(3) Birthing center clinical staff assess the maternal patient's risk for obstetric complications through careful review of the patient's records for prenatal screening [for]of potential problems[throughout pregnancy].

(4) Birthing centers recognize the individual needs of, and provide service to, low risk maternal patients expected to have an uncomplicated [~~pregnancy,~~]labor and delivery.

R432-550-3. Time for Compliance.

Facilities governed by these rules shall be in full compliance with these rules at the time of licensure.

R432-550-4. Definitions.

(1) Common definitions R432-1-3.

(2) Special Definitions:

(a) "Birth room" means a room and environment designed, equipped and arranged to provide for the care of a maternal patient and newborn and to accommodate a maternal patient's support person during the process of vaginal birth and recovery. "Birth room" does not include rooms intended for pre-admittance or post-discharge accommodations of maternal patients and their newborns.

(b) "Birthing center" means a freestanding facility, receiving maternal patients and providing care during ~~[pregnancy]~~ labor, delivery and immediately after delivery.

(c) "Patient" means a woman or newborn receiving care and services provided by a birthing center during ~~[pregnancy]~~ labor, childbirth and recovery.

(d) "Clinical staff" means ~~[the physicians, certified nurse-midwives and other licensed health care practitioners]~~ a licensed maternity care practitioner appointed by the governing authority to practice within the birthing center and governed by rules approved by the governing body.

(e) "Support person" means the individual or individuals selected or chosen by a patient to provide emotional support and to assist her during the process of labor and childbirth.

(f) "Vaginal birth" means the three stages of labor.

(g) "Licensed maternity care practitioner" means a person licensed to provide maternity care services including physicians licensed under Title 58, Chapters 67 and 68, Certified Nurse-Midwives licensed under Title 58, Chapter 44a, Naturopathic Physicians licensed under Title 58, Chapter 71, Licensed Direct-Entry Midwives licensed under Title 58, chapter 77, and others licensed to provide maternity, midwifery or obstetric care under Title 58.

[R432-550-5. Licensure.

~~License Required. See R432-2.]~~

R432-550-[6]5. General Construction Rules.

See R432-14 Birthing Center Construction Rules.

R432-550-[7]6. Governing Body.

(1) The licensee shall appoint in writing an individual or group to constitute the facility's governing body.[

~~(2)]~~ The governing body shall:

(a) comply with federal, state and local laws, rules and regulations;

(b) adopt written policies and procedures which describe the functions and services of the birthing center and protect patient rights;

(c) adopt a policy prohibiting discrimination because of race, color, sex, religion, ancestry, or national origin in accordance with Title 13, Chapter 7, Sections [43-7-]1 through 4.

(d) develop an organizational structure establishing lines of authority and responsibility;

(e) when the governing body is more than one individual, conduct meetings in accordance with facility policy, but at least annually, and maintain written minutes of the meetings;

(f) appoint by name and in writing a qualified administrator;

(g) appoint by name and in writing a qualified director of the clinical staff;

~~_____ (h) notify the licensing agency in writing no later than five days after a change of administrator, identifying the name of the new administrator and the effective date of the change;]~~

~~([i]h)~~ appoint members of the clinical staff and delineate their clinical privileges;

~~([j]i)~~ review and approve at least annually a quality assurance program for birthing center operation and patient care provided.~~[R432-550-12.]~~

~~([k]i)~~ establish a system for financial management and accountability;

~~([l]k)~~ provide for resources and equipment to provide a safe working environment for personnel;

~~([m]l)~~ act on findings and recommendations of facility-created committees relevant to compliance with these birthing center rules;

~~([n]m)~~ ensure that facility patient admission eligibility criteria are strictly applied by clinical staff and are evaluated through quality assurance review in accordance with R432-550-1[2]1.

~~([3]2)~~ Written policies and procedures shall:

(a) clearly, accurately and comprehensively define the methods by which the facility will be operated to protect the health and safety of patients;

(b) provide for meeting the patient's needs;

(c) provide for continuous compliance with federal, state and local laws, rules and regulations.

(d) Written policies and procedures shall include:

(i) defining the term "low risk maternal patient" which shall include eligibility criteria for birth services offered in the birthing center;

(ii) defining specific criteria, which shall in normally anticipated circumstances render a maternal patient ineligible for birth services or continued care at the birthing center;

(iii) identifying and outlining methods for transferring patients who, during the course of ~~[pregnancy,]~~ labor or recovery, are determined to be ineligible for birthing center services or continued care at the birthing center, including;

(A) information required for proper care and treatment of the individual(s) transferred, including patient records; and

(B) security and accountability of the personal effects of the individual being transferred.

(iv) planning for consultation, back-up services, transfer and transport of a newborn and maternal patient to a hospital where necessary care is available;

(v) documenting the maternal patient has been informed of the ~~[benefits, risks and]~~ eligibility requirements of an out-of-hospital birthing center labor and birth;

(vi) providing ~~[for the education of patients, family and support persons]~~ instructions in postpartum and newborn care to the patient and any other family or support person designated by the patient;

~~_____ (vii) planning for post discharge follow-up of patients;]~~

(vii[i]) registering birth, fetal death or death certificates in accordance with Title 26, Chapter 2, Sections [26-2-]5, [26-2-]13, [26-2-]14, [26-2-]23 and rules promulgated pursuant thereto in R436.

~~(viii[ix])~~ prescribing and instilling a prophylactic solution approved by the Department of Health in the eyes of the newborn in accordance with R386-702-[7]8, Special Measures for the Control of Ophthalmia Neonatorum;

(ix) performing phenylketonuria (PKU) and other[~~metabolic~~] disease tests in accordance with Department of Health Laboratory rules developed pursuant to Section [26-10-]6;

(x[i]) [~~providing for~~]verifying prenatal laboratory screening to include:

(A) blood type and Rh Factor and provision for appropriate use of Rh immunoglobulin;

(B) hematocrit or hemoglobin;

(C) antibody screen;

(D) rubella; and

(E) syphilis;

[~~(F) urine glucose and protein.~~]

(xi[i]) providing for infection control to include:

(A) housekeeping;

(B) cleaning, sterilization, sanitization and storage of supplies and equipment; and

(C) prevention of transmission of infection in personnel, patients and visitors.

R432-550-[8]7. Administrator.

(1) Direction.

(a) The administrator shall be responsible for the overall management and operation of the birthing center.

(b) The administrator shall designate in writing a competent employee to act as administrator in the temporary absence of the administrator.

(c) The administrator's designee shall have authority and responsibility to:

(i) act in the best interests of patient safety and well-being;

(ii) operate the facility in a manner which ensures compliance with these birthing center rules.

(2) Qualifications.

The administrator and administrator's designee shall be knowledgeable:

(a) by education, training or experience in administration and supervision of personnel and qualified as required by facility policy;

(b) in birthing center protocols;

(c) in applicable federal, state and local laws, rules and regulations.

(3) The administrator's responsibilities shall be included in a written job description available for Department review. The administrator shall:

(a) complete, submit and file records and reports required by the Department;

(b) develop and implement facility policies and procedures;

(c) review facility policies and procedures at least annually and report to the governing body on the review;

(d) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority and who have the appropriate Utah license or certificate of completion;

(e) develop, for all employee positions, job descriptions that delineate functional responsibilities and authority; and

(f) review and act on incident or accident reports.

R432-550-[9]8. Clinical Director.

(1) The clinical director shall be responsible for implementing, coordinating and assuring the quality of patient care services.

(2) The clinical director shall:

(a) be currently licensed to practice medicine or midwifery in Utah;

(b) have training and expertise in obstetric and newborn services offered to ensure adequate supervision of patient care services.

(3) The clinical director's responsibilities shall be included in a written job description available for Department review. The clinical director shall:

(a) review and update facility protocols;

(b) review and evaluate clinical staff privileges and revise them as necessary;

(c) recommend, to the governing body, names of qualified licensed health care practitioners to perform approved procedures and the corresponding clinical staff privileges to be granted;

(d) coordinate, direct and evaluate clinical operations of the facility;

(e) evaluate and recommend to the administrator the type and amount of equipment needed in the facility;

(f) ensure that qualified staff are on the premises [~~when~~]while patients are [~~in~~]admitted to the facility;

(g) ensure clinical staff documentation is recorded immediately and reflects a description of care given;

(h) ensure that planned birthing center services are within the scope of privileges granted to the clinical staff; and

(i) recommend to the administrator appropriate remedial action and disciplinary action, when necessary, to correct violations of clinical protocols.

R432-550-[10]9. Personnel.

(1) The administrator shall employ a sufficient number of qualified professional and support staff who are competent to perform their respective duties, services and functions.

(2) The facility shall maintain written personnel policies and procedures which shall be available to personnel and shall address the following:

(a) content of personnel records;

(b) job descriptions, qualifications and validation of licensure or certificates of completion as appropriate for the position held;

(c) conditions of employment; and

(d) management of employees.

(3) The facility shall maintain personnel records for employees and shall retain personnel records for terminated employees for a minimum of one year following termination of employment.

(4) The facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and patients commensurate with the services offered.

(5) An employee placement health evaluation shall include at a health inventory which shall be completed when an employee is hired. The health inventory shall obtain the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(b) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(6) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Code of Communicable Disease Rules.

(7) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow-up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(a) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

- (i) initial hiring;
- (ii) suspected exposure to a person with active tuberculosis;

and

- (iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(8) ~~[The birthing center shall provide staff development programs to include at least documented orientation for new staff and ongoing in-service training for personnel.~~

~~(a) Facility policy shall define an orientation program, standardized for employee categories of responsibility, and shall specify the time for completion.~~

~~(b) The in-service training program shall define the frequency and content of training to include:~~

- ~~(i) an annual review of facility policies and procedures;~~
- ~~(ii) infection control, personal hygiene and each employee's responsibility in the personnel health program.~~

~~(c) Personnel shall have ready access to the facility's policy and procedure manuals when on duty. [The birthing center personnel must receive documented orientation to the facility and the job for which they are hired.]~~

(9) The birthing center personnel must receive documented ongoing in-service training to include:

- (a) an annual review of facility policies and procedures; and
- (b) infection control, personal hygiene and each employee's responsibility in the personnel health program.

(10) The birthing center Personnel shall have access to the facility's policy and procedure manuals when on duty.

(11) Personnel shall maintain current licensing, certification or registration appropriate for the work performed and as required by the Utah Department of Commerce.

(a) Personnel shall provide evidence of current licensure, registration or certification to the Department upon request.

(b) Failure to ensure personnel are licensed, certified or registered may result in sanctions to the facility license.

R432-550-1[1]0. Contracts[and Agreements].

(1) ~~[The licensee shall secure a written contract or agreement for services not provided directly by the facility. Contracts or agreements shall include a statement that contract personnel shall.]~~ The licensee shall provide a written contract for any birthing center services that are not provided directly by the facility. The licensee shall ensure that the contracted entity:

- (a) performs according to facility policies and procedures;
- (b) conforms to standards required by laws, rules and regulations;
- (c) provides services that meet professional standards and are timely.

(2) ~~Contracts[or transfer agreements]~~ shall be available for Department review.

~~(3) The licensee shall maintain transfer agreements for one or both of the following:~~

~~(a) admitting privileges for clinical staff at a general hospital within 30 minutes travel distance of the birthing center;~~

~~(b) a written transfer agreement with one or more general hospitals located within 30 minutes travel distance of the birthing center.~~

~~(4) The general hospital transfer agreement shall include provisions for:~~

~~(a) transfer of information needed for proper care and treatment of the individual transferred;~~

~~(b) security and accountability of the personal effects of the individual being transferred.]~~

R432-550-1[2]1. Quality Assurance.

(1) The administrator shall establish a ~~[program to ensure quality in the operation of the birthing center and the services provided]~~ quality assurance committee and program. This committee shall review regularly clinic operations, protocols, policies and procedures, incident reports, infection control, patient care policies and safety.

(2) The quality assurance ~~[program shall include a written organizational plan to identify and resolve problems]~~ committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the licensee.

(3) ~~[The quality of services offered by the facility shall be monitored by a quality assurance committee:~~

~~(a) The quality assurance committee shall include at least representatives from facility administration and clinical services and a knowledgeable person who is not an owner or employee of the birthing center.~~

~~(b)]~~ The quality assurance committee shall meet as prescribed in facility policy or at least quarterly and shall keep written minutes available for department review.

~~[(c) The quality assurance committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the governing body and with the administrator and clinical director as necessary to produce desired results.~~

~~(4) The quality assurance program shall include surveillance, prevention and control of infection.~~

R432-550-1[3]2. Emergency and Disaster.

(1) The administrator shall make provisions to maintain a safe environment in the event of an emergency or disaster. An emergency or disaster includes but is not limited to utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic and injury.

(2) The administrator shall educate, train and drill staff to respond appropriately in an emergency in accordance with NFPA 101[31-4], Life Safety Code [1991]2009.

(3) The administrator shall review the written emergency procedures at least annually and update them as appropriate.

(4) Personnel shall have ready access to written emergency and disaster plans when on duty.

(5) The administrator shall review the disaster plan with local disaster agencies as appropriate.

(6) The smoking policy shall comply with Title 26, Chapter 38, the "Utah Clean Air Act" and Section [31-4.4]20.7.4 of the Life Safety Code, [1991]2009 edition.

R432-550-1[4]3. Patients' Rights.

(1) Written patients' rights shall be established and made available to the patient as determined by facility policy which shall include the following:

([1]a) to be fully informed, prior to or at the time of admission, and during stay, of these rights and of facility rules that pertain to the patient;

([2]b) to be fully informed, prior to admission, of the treatment to be received, potential complications and expected outcomes;

([3]c) to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal;

([4]d) to be informed, prior to or at the time of admission and during stay, of services available in the facility and of any expected charges for which the patient may be liable;

([5]e) to be afforded the opportunity to participate in decisions involving personal health care, except when contraindicated;

([6]f) to refuse to participate in experimental research;

([7]g) to be ensured confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

([8]h) to be treated with consideration, respect and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-550-1[5]4. Clinical Staff and Personnel.

(1) ~~[A physician applying for privileges at the birthing center must maintain admitting privileges at a general hospital within 30 minutes travel distance of the birthing center.~~

~~(2) A certified nurse-midwife applying for privileges must provide evidence of, and maintain, a collaborative relationship with a back-up physician to include at least a written and signed agreement approved by the clinical director. Written agreements a certified nurse-midwife establishes with a back-up physician shall include at least the following:~~

~~(a) documentation that the back-up physician agrees to accept consultation calls and referrals from the certified nurse-midwife 24 hours a day;~~

~~(b) documentation that the back-up physician has admitting privileges at a general acute hospital within 30 minutes travel distance of the birthing center;~~

~~(c) provisions to ensure adequate and timely services by the back-up physician.~~

~~(3) Information identifying current clinical staff, back-up physicians and on-call and emergency telephone numbers shall be readily available to birthing center personnel.~~

([4]2) Clinical staff and licensed personnel of the birthing center shall be trained in emergency and resuscitation measures for infants and adults, including but not limited to, cardiopulmonary resuscitation certification through an American Heart Association or American Red Cross approved course.

([5]3) A ~~[physician or certified nurse-midwife]~~ licensed maternity care practitioner shall be present at each birth and remain until the maternal patient and newborn are stable postpartum.

([6]4) A second ~~[employee]~~ member of the birthing center staff who is licensed or certified to give cardiopulmonary resuscitation shall be present at each birth.

([7]5) Clinical staff, licensed personnel and support staff shall be provided to meet patients' needs, to ensure patients' safety and to ensure that patients in active labor are attended.

R432-550-1[6]5. Clinical Staff.

(1) The attending member of the clinical staff shall ensure the supervision of, and quality of, care delivered to the patient admitted to the facility.

(2) Each patient shall be under the care of a member of the clinical staff.

(3) Clinical staff members shall comply with applicable professional practice laws and written birthing center protocols approved by the clinical director.

(4) The attending member of the clinical staff shall verify in writing that the patient conforms to facility eligibility criteria.

(5) The attending member of the clinical staff shall decide when transfer of a patient to a hospital is necessary and document in writing the conditions warranting the decision.

[R432-550-17. Nursing Services.

~~(1) The birthing center shall provide nursing care services to meet the needs of the patients served.~~

~~(2) Licensed nursing service personnel shall plan and deliver nursing care as defined in written facility policy and in accordance with Title 58, Chapters 31b and 44a; and R156-31b and R156-44a; and other applicable laws and rules.~~

~~(3) The administrator shall employ sufficient licensed and auxiliary nursing staff to meet the total nursing needs of the patients.]~~

R432-550-1[8]6. Equipment and Supplies.

(1) The administrator shall provide necessary equipment in good working order to meet the patient's needs.

(2) The type and amount of equipment shall be indicated in facility policy and approved by the clinical director.

(3) An emergency cart or tray equipped to allow completion of emergency procedures defined by facility policy shall be readily available.

(a) The facility shall safely store the emergency cart or tray in a designated area that is accessible to authorized personnel.

(b) The facility shall maintain a written log of all upkeep of the emergency cart or tray.

(4) The inventory of supplies shall be sufficient to care for the number of patients registered for care.

(5) Properly maintained equipment and supplies for the maternal patient and the newborn shall include at least the following:

(a) furnishings suitable for labor, birth and recovery;

(b) oxygen with flow meters and masks or equivalent;

(c) ~~[mechanical suction and]~~ bulb suction;

(d) resuscitation equipment to include resuscitation bags, ~~[laryngoscopes, endotracheal tubes]~~ laryngeal mask airways and oral airways;

(e) firm surfaces suitable for use in resuscitating patients;

(f) emergency medications~~[-, intravenous fluids]~~ and related supplies and equipment;

(g) fetal monitoring equipment, minimally to include a fetoscope or ~~[doptone]~~ doppler;

(h) equipment to monitor and maintain the optimum body temperature of the newborn;

- (i) a clock indicating hours, minutes and seconds;
- (j) sterile suturing equipment and supplies;
- (k) adjustable examination light;
- (l) infant scale;
- (m) a telephone or equivalent two-way communication device capable of reaching other facilities or emergency agencies; and
- (n) a delivery log for recording birth data.

R432-550-1[9]7. [Pharmacy Service] Medications.

(1) ~~The administrator shall provide documentation that facility pharmacy services comply with R156-17a, Board of Pharmacy Rules, Section 58-17a, Pharmacy Practice Act, Section 58-37, Controlled Substances Act, and with other applicable state and federal laws, rules and regulations.~~

~~_____~~(2) Licensed personnel shall prescribe, order and administer medication in accordance with applicable professional practice acts, pharmacy and controlled substances laws.

R432-550-[20]18. Anesthesia Services.

(1) The birthing center shall provide facilities and equipment for the provision of anesthesia services commensurate with the obstetric procedures planned for the facility.

(2) The clinical director shall ensure the safety of anesthesia services administered to patients by clinical staff through written policies and protocols approved by the clinical staff for anesthetic agents, delivery of anesthesia and potential hazards of anesthesia.

~~[(a) Protocols for administration of anesthesia by a certified nurse-midwife shall be in accordance with R156-44a-102 and R156-44a-601.~~

~~_____~~[(b)3] A clinical staff member shall monitor patients who receive anesthesia or analgesics.

R432-550-[2]19. Laboratory[and Radiology] Services.

(1) The birthing center shall provide direct or contract laboratory~~[radiology]~~ and associated services according to facility policy and to meet the needs of patients.

(2) Laboratory~~[and radiology]~~ reports or results shall be reported promptly to the attending clinical staff member and documented in the patient's medical record.

(3) Laboratory services shall be provided ~~[by a]~~ according to CLIA ~~[approved laboratory which meets]~~ requirements ~~[of R432-100-22. In-house laboratory facilities shall meet the requirements for laboratories in the construction portion of this rule].~~

~~_____~~(4) Radiology services shall comply with applicable sections of R313-16 Radiation Control and R432-100-21.]

R432-550-2[2]0. Medical Records.

(1) Medical records shall be complete, accurately documented and systematically organized to facilitate retrieval and compilation of information.

(2) An employee designated by the administrator shall be responsible and accountable for the processing of medical records.

(3) The medical record and its contents shall be safeguarded from loss, defacement, tampering, fires and floods.

(4) Medical records shall be protected against access by unauthorized individuals.

- (a) Medical record information shall be confidential.

(b) The birthing center may disclose medical record information only to authorized persons in accordance with federal, state and local laws.

(c) The birthing center shall obtain consent from the patient before releasing client information identifying the client, including photographs, unless release is otherwise allowed or required by law.

(5) Medical records shall be retained for at least five years after the last date of patient care. Records of minors, including records of newborn infants, shall be retained for three years after the minor reaches legal age under Utah law, but in no case less than five years.

(6) The birthing center shall maintain an individual medical record for each patient which shall include but is not limited to written documentation of the following:

- (a) admission record with demographic information and patient identification data;

- (b) history and physical examination which shall be up-to-date upon the patient's admission;

- (c) written and signed informed consent;

- (d) orders by a clinical staff member;

- (e) record of assessments, plan of care and services provided;

- (f) record of medications and treatments administered;

- (g) laboratory and radiology reports;

- (h) discharge summary for mother and newborn to include a note of condition, instructions given and referral as appropriate;

- (i) prenatal care record containing at least prenatal blood serology, Rh factor determination, past obstetrical history and physical examination and documentation of fetal status;

- (j) monitoring of progress in labor with assessment of maternal and newborn reaction to the process of labor;

- (k) fetal monitoring record;

- (l) labor and delivery record, including type of delivery, record of anesthesia and operative procedures if any; and

~~_____~~(m) ~~[record of administration of Rh immune globulin;~~ ~~_____~~(n) documentation that the patient is informed of the statement of patient rights.

(7) The records of newborn infants shall include the following:

- (a) date and hour of birth, birth weight and length, period of gestation, ~~[sex]~~ gender and condition of infant on delivery including Apgar scores and resuscitative measures;

- (b) mother's name or unique identification;

- (c) record of ophthalmic prophylaxis; and

- (d) the identification number of the screening kit used to screen for metabolic diseases, documentation that metabolic screening, ~~[was done and the]~~ genetic screening, PKU or other metabolic disorders reports were completed or refused by the client.

R432-550-2[3]1. Housekeeping Services.

(1) The facility shall provide adequate housekeeping services to maintain a clean and sanitary environment.

(2) The facility shall develop and implement written housekeeping policies and procedures.

R432-550-2[4]2. Laundry Services.

(1) The facility shall develop and implement written policies and procedures for storage and processing of clean and soiled linen.

(2) Clean linen shall be stored, handled and transported to prevent contamination. Linens shall be maintained in good repair ~~and shall not be threadbare~~.

(3) Soiled linen shall be handled, transported, stored and processed in a manner to prevent both leakage and the spread of infection.

R432-550-2[5]3. Maintenance, Physical Environment, and Safety.

(1) The facility shall provide adequate maintenance service to ensure that facility equipment and grounds are maintained in a clean and sanitary condition and in good repair.

(2) The facility shall develop and implement a written maintenance program which shall include a preventive maintenance schedule for major equipment and physical plant systems.

R432-550-2[6]4. General Maintenance.

(1) The facility shall maintain facility buildings, fixtures, equipment and spaces in operable condition.

(2) The facility shall provide a safe, clean and sanitary environment.

(3) The facility shall conduct a pest-control program that ensures the facility is free from vermin.

(4) Direct or contract pest-control programs shall comply with Title 4, Chapter 14.

(5) Documentation shall be maintained for Department review.

R432-550-2[7]5. Waste Processing Service.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-550-2[8]6. Lighting.

The facility shall provide adequate and comfortable lighting to meet the needs of patients and personnel.

R432-550-2[9]7. Limitations of Services.

(1) ~~[Birthing center maternal patients shall be limited to women initially determined to be at low maternity risk and evaluated regularly throughout pregnancy to ensure they remain at low risk for a poor pregnancy outcome.~~

~~(2) Birthing center policy shall establish a written risk assessment system to assess the individual risk for each maternal patient.~~

~~(3) A clinical staff member shall perform and document a risk assessment for each maternal patient, which shall include evaluating the maternal patient for the criteria in R432-550-29(4) and facility policy, to ensure the patient needs:~~

~~(a) fall within the scope of practice and standards of care included in the clinical staff member's professional practice act and within facility policy; and~~

~~(b) meet the eligibility requirements for a low risk maternal patient.~~

~~(4) In order to be given care in a birth center a patient shall exhibit no evidence of the following: Clients shall become ineligible for birthing center care upon development of:~~

~~(a) [severe anemia or blood dyscrasia;~~
~~(b) insulin dependent diabetes mellitus;~~
~~(c) symptomatic cardiovascular disease, including active thrombophlebitis;~~
~~(d) compromised renal function;~~
~~(e) substance abuse;~~
~~(f) pregnancy induced hypertension to include moderate to severe hypertension, preeclampsia and toxemia;~~
~~(g) known or suspected active herpes genitalis;~~
~~(h) viral infections during pregnancy known to adversely affect fetal well-being;~~
~~(i) previous caesarean section, major uterine wall surgery or obstetrical complications likely to recur;~~
~~(j) multiple gestation;~~
~~(k) pre-term labor (37 weeks or less) or post-term gestation (43 weeks or greater);~~
~~(l) prolonged rupture of membranes;~~
~~(m) intrauterine growth retardation or macrosomia;~~
~~(n) suspected serious congenital anomaly;~~
~~(o) fetal presentation other than vertex;~~
~~(p) oligohydramnios, polyhydramnios or chorioamnionitis;~~
~~(q) abruptio placenta or placenta previa;~~
~~(r) fetal distress which will be likely to adversely affect the infant in labor or at birth, including moderate to heavy meconium stained amniotic fluid;~~
~~(s) a clinical need for anesthesia or analgesia other than those used in a setting where anesthesia and analgesia are limited in accordance with the facility's written protocols; or~~

~~(t) a desire for transfer from birthing center care;~~
~~(u) any condition identified intrapartum or postpartum which will be likely to adversely affect the health of the maternal patient or infant and will require management in a general hospital.~~

R432-550-[30]28. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in Title 26, [Chapter 21, Section 11 and R432-3-[6]7 and be punished for violation of a class A misdemeanor as provided in Title 26, [Chapter 21, Section 16.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: [October 1, 2011]2016

Notice of Continuation: November 9, 2015

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-16

**Health, Family Health and
Preparedness, Primary Care and Rural
Health
R434-40-11
Loan Repayment Grant Eligibility and
Selection**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40245

FILED: 03/08/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment changes the reference in the authorizing, implemented, or interpreted law citation block at the end of the text. There was a typographical error and the statute cited was incorrect. It should have cited Section 26-46-102 instead of Section 26-4-102. Subsections R434-40-11(3) and (4) are re-numbered to Subsections R434-40-11(2) and (3). Subsection R434-40-11(2) was previously skipped when the rule was published, and the sections are re-numbered appropriately. There is also a change in the new Subsection R434-40-11(3). The amendment changes the eligibility guidelines to allow for applicants to apply within 18 months of beginning employment at an approved eligible site. Previously, the guidelines required an applicant to apply within 1 year (12 months) of beginning employment at an approved eligible site. This change was requested by the Utah Health Care Workforce Financial Assistance Program Advisory Committee.

SUMMARY OF THE RULE OR CHANGE: Subsections R434-40-11(3) and (4) are re-numbered to Subsections R434-40-11(2) and (3). Subsection R434-40-11(3) changes the eligibility guidelines to allow for grant applications from applicants within 18 months of beginning employment at an approved eligible site, instead of within one year of beginning employment at an approved eligible site. Section 26-4-102 is changed to Section 26-46-102 at the end of the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-46-102

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated aggregate costs or savings to the state budget because the rule does not change any processes for the state.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated aggregate costs or savings to local government because the rule does not impact local government.
- ◆ **SMALL BUSINESSES:** There are no anticipated aggregate costs or savings to small businesses because the rule does not change any requirements for the employers of the applicants.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated aggregate costs or savings to businesses, individuals, local governments, and persons that are not small businesses because the rule does not change any requirements for the employers of the applicants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because the rule does not change any requirements for the applicants.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the rule does not change any requirements for the employers of the applicants.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
PRIMARY CARE AND RURAL HEALTH
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Don Wood by phone at 801-273-6654, by FAX at 801-273-4165, or by Internet E-mail at donwood@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/16/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R434. Health, Family Health and Preparedness, Primary Care and Rural Health.**R434-40. Utah Health Care Workforce Financial Assistance Program Rules.****R434-40-11. Loan Repayment Grant Eligibility and Selection.**

(1) In selecting a loan repayment grant recipient for a loan repayment grant award, the Department may evaluate the applicant based on the following selection criteria:

(a) the extent to which an applicant's training in a health care specialty is needed at an approved site;

(b) the applicant's commitment to serve in an underserved area, which can be demonstrated in any of the following ways:

(i) has worked or volunteered at a community or migrant health center, homeless shelter, public health department clinic, worked with geriatric populations, or other service commitment to the medically underserved;

(ii) has work or educational experience with the medically underserved through the Peace Corps, VISTA, has worked with geriatric populations, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for provision of health care services to the medically underserved;

(iv) other facts or experience that the applicant can demonstrate to the Department that establishes his commitment to serve in an underserved area;

(v) the availability of the applicant to begin service, with greater consideration being given to applicants available for service at earlier dates;

(c) the applicant's:

(i) academic standing;

(ii) prior professional or personal experience serving in an underserved area;

- (iii) board certification or eligibility;
 - (iv) postgraduate training achievements;
 - (v) peer recommendations;
 - (vi) other facts that the applicant can demonstrate to the Department that establishes his professional competence or conduct;
 - (d) the applicant's financial need;
 - (e) the applicant's willingness to serve patients who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP;
 - (f) the applicant's willingness to provide care regardless of a patient's ability to pay;
 - (g) the applicant's ability and willingness to provide care;
- and
- (h) the applicant's achieving an early match with an approved site.

~~(3)~~(2) To be eligible for a loan repayment grant, an applicant must be a United States citizen or permanent resident.

~~(4)~~(3) The Department may consider only grant applicants who apply within ~~one year~~ 18 months of the applicant's beginning employment at an approved eligible site.

KEY: medically underserved, grants, scholarships

Date of Enactment or Last Substantive Amendment: ~~May 8, 2014~~ **2016**

Authorizing, and Implemented or Interpreted Law: ~~26-46-102~~

Human Services, Administration **R495-885** Employee Background Screenings

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40264

FILED: 03/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to create a Department of Human Services (DHS) employee background screenings process involving the use and retention of fingerprints as allowed by Sections 62A-2-120 and 62A-1-118.

SUMMARY OF THE RULE OR CHANGE: This rule creates a background screening process for DHS employees and volunteers in order to enhance the safety of DHS clientele and promote the public trust. This holds DHS employees to equal or higher standards than those who work with DHS clientele via DHS licenses or contracts.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-1-118 and Section 62A-2-120

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The cost to DHS will be approximately \$170,000 in the first year with approximately

\$60,000 a year of ongoing costs. These amounts cover the \$52.75 charge by public safety paid to run and retain fingerprints, including a FBI lifetime rap back subscription. The fees are set by the FBI and Public Safety.

◆ **LOCAL GOVERNMENTS:** There is no impact for local government--Only DHS budget is affected.

◆ **SMALL BUSINESSES:** There is no impact for small business--Only DHS budget is affected.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no other impacted entities, fiscally--Only DHS budget is affected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No individual will bear the cost. Compliance costs will be borne by DHS.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This process will have no fiscal impact on businesses in our community.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES

ADMINISTRATION

ROOM DHS ADMINISTRATIVE OFFICE MULTI

STATE OFFICE BUILDING

195 N 1950 W

SALT LAKE CITY, UT 84116

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Diane Moore by phone at 801-538-4235, by FAX at 801-538-4553, or by Internet E-mail at dmoore@utah.gov

◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/02/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2016

AUTHORIZED BY: Diane Moore, Director

R495. Human Services, Administration.

R495-885. Employee Background Screenings.

R495-885-1. Authority and Purpose.

(1) This Rule is authorized by Sections 62A-1-118 and 62A-2-120.

(2) This Rule clarifies the standards for Department of Human Services' employee and volunteer background screening.

(3) This Rule is created to hold DHS employees and volunteers to high standards of conduct, protect children and vulnerable adults, and promote public trust.

R495-885-2. Definitions.

(1) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(2) "Child" is defined in Section 62A-2-101.

(3) "Department" or "DHS" means the Department of Human Services.

(4) "Direct Access" is defined in Section 62A-2-101.

(5) "Director" means the Director of each DHS Office or Division, and includes the Director's designee.

(6) "Directly Supervised" is defined in 62A-2-101.

(7) "Employee" means a prospective employee who has received a job offer from DHS or a current employee of DHS, and includes paid interns.

(8) "Executive Director" means the Executive Director of DHS or the Deputy Director designated by the Executive Director.

(9) "FBI rap back" is defined in Section 53-10-108.

(10) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards.

(11) "Volunteer" means an individual who donates services without pay or other compensation, except expenses actually and reasonably incurred and pre-approved by the supervising agency, and includes unpaid interns.

(12) "Vulnerable adult" is defined in Section 62A-2-101.

R495-885-3. Employees and Volunteers with Direct Access.

(1) The Department finds that a criminal history or identification as a perpetrator of abuse or neglect is directly relevant to an individual's employment or volunteer activities within DHS.

(2) All Department employees and volunteers who may have direct access and who may not be directly supervised at all times must have an annual background screening clearance in accordance with Sections 62A-1-118 and 62A-2-120, which shall include retention of fingerprints by BCI for FBI rap back.

(3) Department employees and volunteers who may have direct access and may not be directly supervised at all times shall:

(a) Submit a background screening application to their respective Division or Office on a form created by the Department; and

(b) Submit fingerprints to the Department via a DHS-operated live-scan machine or:

two ten-print fingerprint cards produced by a law enforcement agency, an agency approved by the BCI, or another entity pre-approved by the Department

(c) not be required to submit fingerprints to DHS if they have submitted fingerprints for retention

(i) to BCI for an Office or Division clearance, and the Office or Division ensures that the minimum standards set forth in Section 62A-2-120 are enforced; or

(ii) to the Department of Health for employees and volunteers of the Utah State Developmental Center per code, or

(iii) to the Office of Licensing as an individual associated with a license as long as the fingerprints are retained by BCI for FBI rap back.

(4) The DHS Office of Licensing shall access information to perform the background checks described in Sections 62A-1-118 and 62A-2-120.

(a) The DHS Office of Licensing will not duplicate fingerprint-based criminal background checks on Department employees or volunteers who have a current fingerprint-based criminal background clearance pursuant to R495-885-3(3).

(b) The fingerprints submitted by DHS employees who are required to obtain a background screening pursuant to Section 62A-2-120 as an individual associated with a licensee shall be utilized to perform the screening required by this R495-885. Screening results shall be reviewed in accordance with both the standards required by Section 62A-2-120 and this R495-885.

(5) Except as described in R495-885-5, Department employees and volunteers who would automatically be denied a background screening approval as described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(6) Except as described in R495-885-5, Department employees and volunteers who have any offense or finding described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

(7) Each Division and Office shall develop and implement a protocol to ensure renewal background screening applications are submitted to the DHS Office of Licensing annually for all database systems that are not included in the FBI rap back fingerprint process.

R495-885-4. Employees and Volunteers with No Direct Access.

(1) The Department finds that a criminal history is directly relevant to an individual's employment activities within DHS.

(2) The Department is not authorized to perform the checks described in Sections 62A-1-118 and 62A-2-120 for employees with no direct access.

(3) Each Division and Office will identify which of their positions includes no potential for direct access that is not directly supervised.

(4) Each employee who does not potentially have direct access shall submit an "Authorization and Waiver for Criminal History Check" form to a Department of Human Resources Management, DHS Field Office authorizing DHRM to perform name-based background checks.

(5) Except as described in R495-885-5, Department employees who would automatically be denied a background screening approval based upon the offenses described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(6) Except as described in R495-885-5, Department employees who have any offense described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

(7) Volunteers who do not have a background screening clearance pursuant to R495-885-3 will be directly supervised.

R495-885-5. Background Screening Review.

(1) The Office of Licensing or the Department of Human Resources Management, DHS Field Office shall notify the Director of the background screening results of each prospective employee, employee, and volunteer.

(2) The Director shall review the background screening results of each prospective employee, employee, and volunteer.

(3) Review criteria for prospective or probationary employees and volunteers:

(a) Automatic denial offenses outlined in 62A-2-120(5) (a) are not eligible for review by the DHS Employee and Volunteer Comprehensive Review Committee;

(b) The Director has sole discretion to determine whether to deny employment or refer a prospective or probationary employee or volunteer with the following background screening findings to the DHS Employee and Volunteer Comprehensive Review Committee;

(i) All other circumstances outlined in 62A-2-120(6)(a),
or

(ii) any MIS supported or substantiated findings (for individuals with direct access only)

(c) The determinations of the Director and the DHS Employee and Volunteer Comprehensive Review Committee are final, and a prospective or probationary employee or volunteer has no right to appeal.

(4) Review process for non-probationary employees:

(a) The following background screening findings shall be submitted to the Director:

(i) Automatic denial offenses outlined in 62A-2-120(5) (a),

(ii) All other circumstances outlined in 62A-2-120(6)(a),
or

(iii) any MIS supported or substantiated findings.

(b) The Director may consult with the Executive Director and/or the Office of Licensing, and shall evaluate whether the non-probationary employee may present a risk of harm to a child or vulnerable adult or does not meet DHS high standards of conduct or promote public trust.

(c) The Executive Director may, in his/her sole discretion, approve the non-probationary employee for continued employment, including defining permissible and impermissible DHS-wide work-related activities, or consult the Department of Human Resource Management regarding termination of employment. The determination of the Executive Director is final.

R495-885-6. DHS Employee and Volunteer Comprehensive Review Committee.

(1) The Director of the following Department divisions and offices shall appoint one member and one alternate to serve on the DHS Employee and Volunteer Comprehensive Review Committee:

(a) the Executive Director's Office;

(b) the Division of Aging and Adult Services;

(c) the Division of Child and Family Services;

(d) the Division of Juvenile Justice Services;

(e) the Division of Services for People with Disabilities;

(f) the Division of Substance Abuse and Mental Health;

(g) the Office of the Public Guardian; and

(i) the Office of Licensing.

(2) DHS Employee and Volunteer Comprehensive Review Committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3) The appointed Office of Licensing member shall chair the DHS Employee and Volunteer Comprehensive Review Committee as a non-voting member.

(4) Five voting members shall constitute a quorum.

(5) The DHS Employee and Volunteer Comprehensive Review Committee shall conduct a comprehensive review of a prospective or probationary employee or volunteer's background

screening application, criminal history records, abuse, neglect or exploitation records, and related circumstances, in accordance with Section 62A-2-120(6).

R495-885-7. DHS Employee and Volunteer Comprehensive Review Process.

(1) The Office or Division may inform the prospective or probationary employee or volunteer that the results of a background screening indicate they have a criminal history or supported or substantiated findings of abuse or neglect, and the employee or volunteer may:

(a) voluntarily withdraw a pending employment or volunteer application;

(b) voluntarily terminate probationary employment; or

(c) request further review and submit any written statements or records that the employee or volunteer wants the DHS Employee and Volunteer Comprehensive Review Committee to consider, including but not limited to non-redacted documents relating to the results, the nature and seriousness of the offense or incident; the circumstances under which the offense or incident occurred; the age of the employee or volunteer when the offense or incident occurred; whether the offense or incident was an isolated or repeated incident; whether the offense or incident directly relates to abuse of a child or vulnerable adult, evidence of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed.

(i) an employee or volunteer who wants the DHS Employee and Volunteer Comprehensive Review Committee to consider documents relating to the screening results shall submit the documents to the Office or Division within 15 calendar days of notification by the Office of Division.

(2) The Office or Division shall gather information from a prospective or probationary employee or volunteer who requests review and submit it to the DHS Employee and Volunteer Comprehensive Review Committee.

(a) The Division may redact any personally identifying information of the prospective or probationary employee or volunteer that does not compromise the content of the review.

(3) The DHS Employee and Volunteer Comprehensive Review Committee shall evaluate the information provided by the Office or Division and any information provided by the prospective or probationary employee or volunteer. The DHS Employee and Volunteer Comprehensive Review Committee shall consider:

(a) the nature and seriousness of the offense or incident;

(b) the circumstances under which the offense or incident occurred;

(c) the age of prospective or probationary employee or volunteer when the offense or incident occurred;

(d) whether the offense or incident was an isolated or repeated incident;

(e) whether the offense or incident directly relates to abuse of a child or vulnerable adult,

(f) whether approval would likely create a risk of harm to a child or a vulnerable adult;

(g) whether the information may be relevant to the employment or volunteer activities of that person;

(h) whether the relevant information should be relied upon to deny employment or volunteer activities, and

(i) that the background screening approval may be transferred to other DHS Offices or Divisions.

(4) The DHS Employee and Volunteer Comprehensive Review Committee may approve the background screening of a prospective or probationary employee or volunteer only after a simple majority of the voting members of the DHS Employee and Volunteer Comprehensive Review Committee determines that approval will not likely create a risk of harm to a child or vulnerable adult or the prospective employee does not meet DHS high standards of conduct or promote public trust, and identify permissible and impermissible DHS-wide work-related activities.

(5) The DHS Employee and Volunteer Comprehensive Review Committee shall recommend denial of the background screening of a prospective or probationary employee or volunteer when it finds that approval will likely create a risk of harm to a child or vulnerable adult in any DHS Office or Division or the prospective or probationary employee or volunteer does not meet DHS high standards of conduct or promote public trust.

(6) Except as described below, a prospective employee or a volunteer whose background screening has been denied shall not be accepted as a volunteer or hired as an employee. A probationary employee whose background screening has been denied shall have no direct access and employment shall be terminated.

(a) A Director may, in his/her sole discretion, appeal the decision of the DHS Employee and Volunteer Comprehensive Review Committee to the Executive Director.

R495-885-8. Division/Office Responsibilities.

(1) The Department shall notify the DHS Office of Licensing within five months of the termination of each employee for whom fingerprints have been retained under Section 62A-2-120 to enable the Office of Licensing to notify BCI and ensure the destruction of fingerprints.

(2) Each Division and Office shall ensure that an employee or volunteer who previously was screened based upon having no direct access shall, prior to having any direct access, be screened and approved in accordance with R495-885.

R495-885-9. Compliance.

The Department will set an implementation schedule to be in compliance with this rule no later than December 31, 2016.

KEY: background, employees, human services, screening
Date of Enactment or Last Substantive Amendment: 2016
Authorizing, and Implemented or Interpreted Law: 62A-1-118; 62A-2-120

Human Services, Child and Family
Services
R512-40
Adoptive Home Studies, Recruitment,
Approval

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 40255
FILED: 03/10/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule modification is to bring the rule in line with current statute and practice.

SUMMARY OF THE RULE OR CHANGE: In this repeal and reenactment, the new rule includes definitions and the procedure for recruitment of adoptive families for children in the custody of Child and Family Services, which was not included in the old rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-10-108 and Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-205.6 and Section 62A-4a-607 and Section 78B-6-128

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes do not increase workload that would require additional staff or other costs.

♦ **LOCAL GOVERNMENTS:** Local governments have no responsibility for services offered by Child and Family Services and are, therefore, not affected by this rule and will have no fiscal impact.

♦ **SMALL BUSINESSES:** Small businesses have no responsibility for services offered by Child and Family Services and are, therefore, not affected by this rule and will have no fiscal impact.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no expected fiscal impact for "persons other than small businesses, businesses, or local government entities" because funding requests for services offered by Child and Family Services come out of already-existing budgets.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Child and Family Services determined that there will be no compliance costs for affected persons because there are no specific costs involved with the changes being made to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
 ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonessrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/02/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2016

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.**[R512-40. Adoptive Home Studies, Recruitment, Approval.****R512-40-1. Purpose and Authority.**

(1) The purpose of this rule is to establish standards for conducting adoptive home studies, recruitment of adoptive homes, and approval of adoptive homes.

(2) This rule is authorized by Section 62A-4a-102.

R512-40-2. Guidelines for Persons Applying for Adoptive Placement of a Child With Special Needs.

(1) Adoptive homes will be approved following the provisions of R501-7. In addition, the following factors will be considered:

(a) Adoptive applicants shall apply in the region where they reside:

(b) Both couples and single individuals may be approved as prospective adoptive parents based upon their ability to provide for children with special needs.

(c) Applicants shall show commitment and stability in existing family relationships which would provide a base for an adoptive child.

(d) The evaluation of the family shall include their strengths and weaknesses. Recommendations shall be made as to the age and type of child who can best fit into the home to ensure the healthy development of the child.

(e) Potential adoptive parents must arrange supervision for the child at times when they are not able to be in the home with the child. Supervision is to be in accordance to the child's age and developmental ability.

(f) A prospective adoptive parent may not be approved for the adoptive placement of a child in state custody unless the prospective adoptive parent and any adults living in the home have completed criminal background checks required by Section 78A-6-308 and P.L. 109-248.

(g) The following factors are critical in the success of adoptive placements and should be factors in approving adoptive applicants:

- (i) Commitment to adoption;
- (ii) Ability to sustain long-term relationship;
- (iii) Proper motivation and realistic expectations;
- (iv) Emotional openness and flexibility;
- (v) Empathy;
- (vi) Strong social support system and knowledge of resources; and

(vii) Stable marital relationship.

(h) The following factors may significantly contribute to adoption disruption and should be considered in approving adoptive applicants:

- (i) History of emotional or psychological problem or substance abuse;
- (ii) Impulse control disorders;
- (iii) Disruptive crisis filled lifestyles;
- (iv) Criminal activity;
- (v) Serious problems in child rearing;
- (vi) Unrealistic expectations of self and child; and
- (vii) Marital difficulties and incompatibilities which seriously compromise the ability to meet the needs of the child.

R512-40-3. Follow-Up Services.

(1) A record of the approved home study shall be maintained in the Division of Child and Family Services (Child and Family Services) Management Information System.

(2) Any significant changes in the family's situation shall be documented by revisions or additions on an annual basis in the adoptive study, including revised medical reports, if needed.

(3) At the end of a family's third year as an approved prospective adoptive home, Child and Family Services shall notify the family that their home study will be closed unless the family reapplies for a new home study to be completed.

R512-40-4. Application by Staff of Child and Family Services.

(1) Staff members of Child and Family Services may apply to adopt and may adopt children in State custody in the following manner:

(a) The person applies in the region of residence.

(b) The home study will be completed by staff of another region on a cooperative basis upon the request of the regional director.

(c) Approval of placement of a child in a staff member's home will be by the region having custody of the child. If the prospective adoptive parent is from the same region as the child, the placing committee will consist of the child's caseworker, outside child welfare specialists, and the State Adoption Program Administrator. Supervision will be by the placing region, unless the child and prospective parent are from the same region, in which case, another region will provide supervision.]

R512-40. Recruitment, Home Studies, and Approval of Adoptive Families for Children in the Custody of Child and Family Services.**R512-40-1. Purpose and Authority.**

(1) The purpose of this rule is to establish criteria for recruitment of adoptive families, standards for conducting adoptive home studies, and requirements for approval of adoptive homes.

(2) This rule is authorized by Sections 53-10-108, 62A-4a-102, 62A-4a-105, 62A-4a-205.6, 62A-4a-607, and 78B-6-128.

R512-40-2. Definitions.

(1) For the purpose of this rule the following definitions apply:

(a) "Adoptive parent" means a couple or individual who completes Child and Family Services training for prospective adoptive parents and is approved by Child and Family Services.

(b) "Cohabiting" means residing with another person and being involved in a sexual relationship.

(c) "Home study" means a pre-placement adoption evaluation defined in Section 78B-6-128 regarding the capacity of the adoptive parents, their family, and their resources available to meet the needs of a child in custody.

(d) "Involved in a sexual relationship" means any sexual activity and conduct between persons.

(e) "Permanency" means the establishment and maintenance of a legally permanent living situation for a child to give the child an internal sense of family stability and belonging and a sense of self that connects the child to his or her past, present, and future.

(f) "Residing" means living in the same household on an uninterrupted basis for 30 days or more or on an intermittent basis.

R512-40-3. Recruitment of Adoptive Families for Children in the Custody of Child and Family Services.

(1) Child and Family Services seeks to recruit permanent adoptive families for children in state's custody whose primary permanency goal is adoption, or whose parents have voluntarily relinquished their parental rights or whose parental rights have been terminated by a court.

(2) Recruitment of an adoptive family for children in state's custody is accomplished by:

(a) Discussing with the adoptive applicant or relative caring for the child about adopting the child.

(b) Targeting efforts to identify family members and others known to the child to consider adoption.

(c) Coordinating with Child and Family Services resource family consultants throughout the state about potential adoptive families for a child.

(d) Website listing of a child for whom there is not an identified adoptive family within 30 days of the primary permanency goal of adoption or whose parents' parental rights are terminated.

(e) Requiring all licensed child placing adoption agencies in Utah to inform adoptive applicants that there are children in state's custody available for adoption in accordance with Section 62A-4a-607.

R512-40-4. Requirements for Persons Applying for Adoptive Placement of a Child in the Custody of Child and Family Services.

(1) Legally married couples and single adults, including relatives of a child and employees of Child and Family Services, may apply to adopt a child in state's custody based on their ability to provide a permanent family for the child. Adoptive applicants shall:

(a) Apply in the region where they live.

(b) Complete the adoption training program approved by Child and Family Services, with one exception:

(i) Training for relatives, as defined in Section 78A-6-307, who are adopting a child will be based on needs identified on a case-by-case basis.

(c) Be assessed and approved as an adoptive parent by Child and Family Services following completion of a home study pursuant to R512-40-5.

(d) Obtain a foster care license issued by the Department of Human Services, Office of Licensing, or meet the same standards required to be licensed in R501-12, or receive a written waiver from Child and Family Services for a specific standard.

(e) Receive a determination by Child and Family Services that no conflict of interest exists in the adoption process.

R512-40-5. Home Study Requirements for Adoption.

(1) A home study must be completed by the Department of Human Services, Office of Licensing, or by Child and Family Services, or by a licensed child placing adoption agency contracted with Child and Family Services.

(a) A prospective adoptive parent may not be approved for the adoptive placement of a child in state's custody unless:

(i) The prospective adoptive parent is legally married or single and not cohabiting.

(ii) The prospective adoptive parent and all adults residing in the home have completed criminal background checks, including a national fingerprint-based check that is approved according to criteria specified in Sections 53-10-108, 62A-2-120, 78A-6-308, and 78B-6-128, and Pub. L. 109-248.

(iii) A child abuse registry check is completed by Child and Family Services for the prospective adoptive parent and all adults residing in the home, including a check of child abuse registries in any states in which the prospective adoptive parent and all adults residing in the home have resided in the five years prior to application to adopt that is approved according to criteria specified in Sections 62A-2-120, 78A-6-308, and 78B-6-128, and Pub. L. 109-248.

(2) The home study should be consistent with the standards of the Child Welfare League of America (www.cwla.org).

(a) The following factors are critical in the success of adoptive placements and are required content in adoptive applicant interviews and home study documentation:

(i) Commitment to the legal adoption of the child as a permanent member of the family.

(ii) Stable marital relationship and/or commitment and stability in existing family relationships and/or the ability to sustain long-term relationships that would provide a base for an adoptive child.

(iii) Proper motivation and realistic expectations of a child who has experienced trauma and other effects of abuse and neglect.

(iv) Emotional openness, empathy, and flexibility.

(v) Strong social support system for both the parent and child.

(vi) Knowledge of resources to help raise a child.

(b) The following factors may significantly contribute to adoption disruption and the following are required content in adoptive applicant interviews and home study documentation:

(i) History of emotional or psychological problems or substance abuse.

(ii) Marital difficulties and incompatibilities that seriously compromise the ability to meet the needs of the child.

(iii) Serious problems in child rearing.

(iv) Unrealistic expectations of self and child.

(v) Impulse control disorders.

(vi) Disruptive and/or crisis filled lifestyle.

(vii) Criminal activity.

(c) The home study assessment and family evaluation will include information gathered from the following:

(i) Criminal background clearances for all adults in the home as described in subparagraph 1a(ii) above.

(ii) Child abuse registry clearances for all adults in the home as described in subparagraph 1a(iii) above.

(iii) Four written statements of reference, three of which are positive, regarding the applicant's stability and parenting capacity, with one exception:

(A) Two positive written statements of reference if the applicant is a relative of the child as defined in Section 78A-6-307.

(iv) Psycho-social information gathered from the prospective adoptive parent and family members.

(v) Home visits and interviews to assess the prospective adoptive parent in the following areas:

(A) Marriage and personal stability.

(B) Ability to manage stress.

(C) Parenting skills and emotional openness and flexibility to provide continuity of a caring relationship.

(D) Capacity to parent a child who has experienced trauma and who may have other special needs.

(E) How the children living at home will be affected.

(F) How supervision for the child will be arranged in accordance with the child's age and developmental ability at times when the prospective adoptive parent is not able to be in the home.

(vi) Health status verification regarding the prospective adoptive parent based on a doctor's examination made within six months prior to the date of application.

(vii) Financial status that verifies income sufficient to provide for a child's needs.

(viii) Home health and safety assessment.

(d) The evaluation of the family shall include their strengths and challenges.

(e) To preserve family connections for adopted children, home study requirements for relatives or friends known to the child as defined in Section 78A-6-307 that do not impact the health and safety of the child may be waived.

(f) Recommendations shall be made regarding the specific child intended to be adopted or the age and type of child who can best fit into the home to ensure the healthy development of the child.

R512-40-6. Follow-up Services.

(1) The identified committee in the region that reviews home studies will review each home study provided by the Department of Human Services, Office of Licensing, and any other detailed information regarding the adoptive parent. As a result of the review, the region committee will determine if the adoptive parent is approved to receive adoptive placements, if the adoptive parent is denied for adoptive placements, or if more information is needed from the adoptive parent.

(a) If the adoptive parent is approved for adoptive placements, the region committee (or region designee) will send a letter to the adoptive parent to let them know that they are approved for adoptive placements.

(b) When Child and Family Services determines through the region committee that there are concerns about making an adoptive placement with the adoptive applicant:

(i) The region committee or designee will provide their concerns in writing to designated region staff. The concerns will include any steps an adoptive applicant may take in order remedy concerns.

(ii) Two designated region staff members will meet with the adoptive applicant and review the concerns outlined by the region committee, including whether the concerns can be resolved.

(iii) The region designees will take clarifying information and/or steps that the adoptive applicant has taken to remedy concerns back to the region home study committee.

(iv) If the adoptive applicant has been able to remedy the concerns to the satisfaction of the region committee, the region committee will approve the adoptive parent to receive adoptive placements.

(v) If the adoptive applicant is unable or unwilling to remedy the concerns, a formal, written letter will be sent to the adoptive applicant explaining that Child and Family Services will not be making an adoptive placement with them.

(c) If an adoptive applicant is denied for adoptive placements, the family may request that the Child and Family Services region director or designee review the reasons for the denial. The Child and Family Services region director or designee is the only person who has the authority to reverse a denial.

(2) If a home study was conducted to evaluate a family for a specific child or a relative or friend known to the child as defined in Section 78A-6-307, the home study will be reviewed by the child's caseworker or designated adoption worker to determine if the adoptive parent is the best family to meet the child's needs.

(3) All adoptive home studies will require an updated amendment at least every 18 months to be considered current for child placement or adoption:

(a) A family licensed as a foster parent will require a home study update every 12 months to include background and child abuse registry clearances and to address any changes in the circumstances of the family.

(b) A family that is not licensed as a foster parent or has let their license lapse must have a home study update within 18 months of the original home study to include background and child abuse registry clearances and address any changes in the circumstances of the family.

(c) A home study that is older than two years will require new training requirements and a complete new home study.

(4) The home study document will be maintained in the Child and Family Services offices and will be destroyed according to the retention schedule.

KEY: adoption

Date of Enactment or Last Substantive Amendment: ~~[May 27, 2009]~~2016

Notice of Continuation: March 5, 2012

Authorizing, and Implemented or Interpreted Law: ~~53-10-108; 62A-4a-102; [62A-4a-106; 78A-6-308; Pub. L. 109-248]~~62A-4a-105; 62A-4a-205.6; 62A-4a-607; 78B-6-128

Human Services, Child and Family
Services

R512-41

Qualifying Adoptive Families and
Adoption Placement

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40256

FILED: 03/10/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule modification is to bring the rule in line with current statute and practice.

SUMMARY OF THE RULE OR CHANGE: The content of the amendment is to make technical changes to the rule to bring it in line with current practice by explaining the procedure for qualifying adoptive families for adoption placement.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-205.6

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes do not increase workload that would require additional staff or other costs.

◆ **LOCAL GOVERNMENTS:** Local governments have no responsibility for services offered by Child and Family Services and are, therefore, not affected by this rule and will have no fiscal impact.

◆ **SMALL BUSINESSES:** Small businesses have no responsibility for services offered by Child and Family Services and are, therefore, not affected by this rule and will have no fiscal impact.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no expected fiscal impact for "persons other than small businesses, businesses, or local government entities" because funding requests for services offered by Child and Family Services come out of already-existing budgets.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Child and Family Services determined that there will be no compliance costs for affected persons because there are no specific costs involved with the changes being made to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov

◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonessrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/02/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2016

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.**R512-41. Qualifying Adoptive Families and Adoption Placement.****R512-41-1. Purpose and Authority.**

(1) The purpose of this rule is to define the requirements used to qualify adoptive parent(s) ~~[or individuals]~~ and the criteria for adoption placement used by the Division of Child and Family Services (Child and Family Services).

(2) This rule is authorized by Section 62A-4a-102. This rule also incorporates by reference Public Law 110-351 (2008).

R512-41-2. Definitions.

(1) For the purpose of this rule the following definitions apply:

(a) "Adoptive parent(s)" means a ~~[family]~~ couple or individual who completes Child and Family Services training ~~[for prospective adoptive parent(s) and is approved by a licensed child placement agency or by Child and Family Services.]~~ and has a completed home study for prospective adoptive parent(s) and is approved by Child and Family Services.

~~[(b) "Cohabiting" means residing with another person and being involved in a sexual relationship.]~~

~~[(c) "Involved in a sexual relationship" means any sexual activity and conduct between persons.]~~

~~[(d)](b) "Permanency" means the establishment and maintenance of a permanent living situation for a child to give the child an internal sense of family stability and belonging and a sense of self that connects the child to his or her past, present, and future.~~

~~[(e) "Residing" means living in the same household on an uninterrupted or an intermittent basis.]~~

R512-41-3. Requirements for Adoptive Parent(s).

(1) Prospective adoptive parent(s) who apply to adopt a child in the custody of Child and Family Services, including ~~[kin or Child and Family Services employees, must meet all of the following requirements, pursuant to Rule R512-40:~~

~~[(a) Complete the adoption training program approved by Child and Family Services;~~

~~[(b) Be assessed and approved as adoptive parent(s) following completion of a home study by a licensed child placement agency or by Child and Family Services;~~

~~[(c) Obtain a foster care license issued by the Department of Human Services, Office of Licensing, or meet the same standards, or receive a written waiver from Child and Family Services of a standard;~~

~~(d) Receive a determination by Child and Family Services that no conflict of interest exists in the adoption process; [a relative of a child or a Child and Family Services employee, must meet all of the requirements listed in Rule R512-40.~~

~~[R512-41-4. Adoption Evaluation Requirements:~~

~~(1) An adoption evaluation must be consistent with the standards of the Child Welfare League of America (the evaluation may be done by a licensed child placement agency or Child and Family Services) and must include the following:~~

~~(a) An autobiography or psychosocial information gathered from the prospective adoptive parent(s) and family members;~~

~~(b) A behavioral assessment of the prospective adoptive parent(s) and children living at home;~~

~~(c) A statement that applicants are not cohabiting in a relationship that is not a legal marriage and are in compliance with Section 78B-6-117;~~

~~(d) A health status verification of the prospective adoptive parent(s) and children living at home;~~

~~(e) A verification of financial status;~~

~~(f) An assessment of home safety and health;~~

~~(g) A criminal background check of all adults present in the home, including a national fingerprint-based check of prospective adoptive parents that is approved according to criteria specified in Section 62A-2-120;~~

~~(h) A screening of all adults present in the home against the child abuse data base, including for prospective adoptive parents a check of child abuse registries in any states in which the prospective adoptive parents have resided in the five years prior to application to adopt;~~

~~(i) An assessment of the prospective adoptive parent(s) parenting skills;~~

~~(k) Recommendation of the types of children that may be appropriate for the prospective adoptive parent(s).]~~

~~R512-41-4. Adoption Decision.~~

~~(1) Permanency decisions should be made in a timely manner, recognizing the child's developmental needs and sense of time. Child and Family Services shall make intensive efforts to place the child with the adoptive parent(s) within 30 days after the court determined a permanency goal of adoption for the child.~~

~~(2) When the child is not residing with the family that will adopt the child, Child and Family Services will reconsider any potential kinship caregivers or other adults known to the child.~~

~~(3) Concurrently, the Adoption Committee or committees should seek other resource families in all regions of the state to select adoptive parent(s) who could meet the child's needs.~~

~~(4) If adoptive parent(s) are not found for the child within 30 days of the primary permanency goal becoming adoption, the child must be registered with The Adoption Exchange to help recruit adoptive parents.~~

~~(5) Geographic boundaries alone should not present barriers or delays to the selection of adoptive parent(s).~~

~~(6) The Indian Child Welfare Act, 25 USC 1915 (January 3, 2007), takes precedent for an adoption of an Indian child who is a member of a federally recognized tribe or Alaskan native village.~~

~~(7) Placements will be made in accordance with the Interethnic Adoption Act, 42 USC 1996b (2010).~~

R512-41-5. Matching the Child and the Adoptive Parent(s).

(1) ~~[In the matching process, t]~~The selection of the adoptive parent(s) for a child or sibling group will be determined based on~~[in]~~ the best interest of the child.

(2) The decision must be based on a thorough assessment of the child's current and potential development, medical, emotional, and educational needs, as well as needs for family connections.

(3) The capacity of the prospective adoptive parent(s) to successfully meet the child's needs and to love and accept the child as a fully integrated member of the family must be considered.

(4) The child's preference may be considered, if the child has the capacity to express a preference.

(5) Sibling groups should not be separated.

(a) If siblings are not placed together and there are no safety concerns that preclude the siblings being together, ~~[the adoption committee]~~Child and Family Services should reconsider a family for all the siblings to be adopted together.

(b) If the siblings are not able to be adopted together or if being taken from a current family would create undue trauma to the child, arrangements should be made to allow life-long contact to be pursued between the adoptive families of the separated siblings.

(6) Foster care parent(s) (or other caregiver with physical custody) of the child may be given preferential consideration for adoption if the child has substantial emotional ties with the foster parent(s)/caregiver and if removal of the child from the foster parent(s)/caregiver would be detrimental to the child's well-being.

~~[~~(7) Geographic boundaries alone should not present barriers or delays to the selection of adoptive parent(s).

~~(8) The Indian Child Welfare Act, 25 USC 1915 (January 3, 2007), takes precedent for an adoption of an Indian child who is a member of a federally recognized tribe or Alaskan native village.~~

~~(9) Placements will be made in accordance with the Interethnic Adoption Act, 42 USC 1996b (2010).~~

~~(10) Child and Family Services gives priority for adoptive placements to families in which both a man and a woman are legally married under the laws of this state or valid proof that a court or administrative order has established a valid common law marriage as specified in Section 30-1-4.5. An individual who is not cohabiting may also be considered as an adoptive parent, if the Region Director determines it is in the best interest of the child.]~~

(7) Child and Family Services shall provide detailed information about the child to the prospective adoptive parent(s), allowing sufficient time for the prospective adoptive parent(s) to make an informed decision regarding placement of the child. The information given to the prospective adoptive parent(s) must include detailed information available in writing that is important to raise the child. Child and Family Services and the prospective adoptive parent(s) will acknowledge receipt of the information by signing a Child and Family Services' information disclosure form. Child and Family Services shall respond to questions or concerns of the prospective adoptive parent(s). The prospective adoptive parent(s) shall have the opportunity to meet the child prior to permanent placement. Release of all documents is subject to the Government Records Access Management Act, Title 63G, Chapter 2.

(8) When the approved adoptive parent(s) agree to accept the placement of a child for adoption, the adoptive parent(s) and a representative from Child and Family Services shall sign an agreement for the intent to adopt a specific child on a form provided by Child and Family Services.

~~(9) When the adoptive parent(s) agree to accept the placement of a child who is not free for adoption, the parent(s) shall sign Child and Family Services' foster care agreement.~~

~~[R512-41-6. Adoption Decision.~~

~~(1) Permanency decisions should be made in a timely manner, recognizing the child's developmental needs and sense of time. Child and Family Services shall make intensive efforts to place the child with the adoptive parent(s) within 30 days after the court has freed the child for adoption.~~

~~(2) When the child is not residing with the family that will adopt the child, Child and Family Services will appoint and convene an adoption committee or committees to select adoptive parent(s) in the best interest of the child and to determine the level of adoption assistance, if any. The adoption committee is also responsible for recommending removal of the child from a placement.~~

~~(3) The adoption committee will consist of at least three members to include senior-level Child and Family Services staff and one or more members from an outside agency with expertise in adoption or foster care.~~

~~(4) Anyone who has information regarding the child and the potential matching families may be invited by the adoption committee to present information but not to participate in the deliberations. The adoption committee will reach its decision through consensus. If consensus cannot be reached, the adoption committee will submit their recommendation to the Region Director. The Region Director may confer with the Child and Family Services Director for the final decision.~~

~~(5) The adoption committee will make and retain a written record of their proceedings. All proceedings are confidential.~~

~~(6) Any member of the adoption committee who has a potential conflict of interest must recuse himself or herself from the proceeding.~~

~~(7) Child and Family Services will send written notification of selection to the adoptive parent(s).~~

~~(8) Child and Family Services shall provide detailed information about the child to the prospective adoptive parent(s), allowing sufficient time for the prospective adoptive parent(s) to make an informed decision regarding placement of the child. The information given to the prospective adoptive parent(s) must include detailed information available in writing that is important to raise the child. Release of all documents is subject to the Government Records Management Act. The prospective adoptive parent(s) shall be advised of possible financial and medical assistance available to meet the special needs of the child. Child and Family Services and the prospective adoptive parent(s) will acknowledge receipt of the information by signing a Child and Family Services' information disclosure form. Child and Family Services shall respond to questions or concerns of the potential adoptive parent(s). The prospective adoptive parent(s) shall have the opportunity to meet the child prior to permanent placement.~~

~~(9) A family or individual that is not selected for an adoption placement of a specific child shall have no right to appeal the decision, unless the parent(s) not selected for the adoptive placement is the child's current foster parent(s) and the foster parent(s) have completed all requirements. If the foster parent(s) are not selected for the adoptive placement, the foster parent(s) due process rights for removal of a child apply (Rule R512-31).~~

~~(10) When the approved adoptive parent(s) agree to accept the placement of a child for adoption, the adoptive parent(s) and a representative from Child and Family Services shall sign an agreement for the intent to adopt a specific child on a form provided by Child and Family Services.~~

~~(11) When the adoptive parent(s) agree to accept the placement of a child who is not free for adoption, the parent(s) shall sign Child and Family Services' foster care agreement.]~~

~~R512-41-6. Placement.~~

~~(1) Child and Family Services will make every effort to make a smooth and effective transition of the child to the prospective adoptive parent(s) with the cooperation of the foster family and others who have a supportive relationship with the child.~~

~~(2) All out-of-home requirements continue to be applicable until the adoption is finalized.~~

~~(3) The prospective adoptive parent(s) will have access to all relevant information in the case record to help them understand and accept the child and preserve the child's history.~~

~~(4) The prospective adoptive parent(s) shall be advised about adoption assistance available to meet the special needs of the child before and after the adoption is final, as well as of community services.~~

~~(5) Child and Family Services will develop a Child and Family Plan within 30 days of placement and supervise the adoptive placement, including frequent visits with the child and adoptive family for at least the first six months after placement.~~

~~(6) Child and Family Services' supervision will continue until the adoption is final.~~

~~[R512-41-7. Information Regarding the Adoptive Parent(s).~~

~~(1) No identifying information regarding the adoptive parent(s) shall be released to birth families without the written consent of the adoptive parent(s).]~~

~~R512-41-7. Adoption Disruption/Removal of a Child from Adoptive Parent(s) Prior to Finalization.~~

~~(1) Child and Family Services shall consider removal of a child before an adoption is finalized if the adoptive parent(s) request removal or if serious circumstances impair the child's security or development.~~

~~(2) Prior to removal, Child and Family Services shall respond to the adoptive parent(s)' concerns in a timely manner, counsel with the adoptive parent(s), and, if possible and appropriate, offer further treatment, including intensive in-home services or temporary removal of the child from the home for respite purposes.~~

~~(3) When removal is recommended, the Adoption Committee shall review the placement progress and present situation, and shall decide to either continue placement with further services or to remove the child from the home. The region director will review and approve the decision.~~

~~(4) If the Adoption Committee decides to remove the child, a Notice of Agency Action shall be sent to the adoptive parent(s), notifying them of their due process rights. The adoptive parent(s) shall be offered the same rights as those offered a foster family regarding removal of a child (Rule R512-31).~~

~~(5) Child and Family Services will reconsider any potential kinship caregivers if the child is disrupted or removed from an adoptive placement or a permanent placement has not been identified.~~

R512-41-8. Placement.

~~(1) Child and Family Services will make every effort to make a smooth and effective transition of the child to the adoptive parent(s) with the cooperation of the foster family and others who have a supportive relationship with the child. All out-of-home requirements continue to be applicable until the adoption is finalized.~~

~~(2) The adoptive parent(s) will have access to all relevant information in the case record to help them understand and accept the child and preserve the child's history. Child and Family Services will inform the adoptive parent(s) of community services and adoption assistance available before and after the adoption is final.~~

~~(3) Child and Family Services will develop a Child and Family Plan within 30 days of placement and supervise the adoptive parent(s), including frequent visits with the child for at least the first six months after placement.~~

~~(4) Child and Family Services' supervision will continue until the adoption is final.]~~

R512-41-8. Adoption Finalization and Post Adoption.

~~(1) Before an adoption is final, the Adoption Assistance Committee shall assess if the child qualifies for adoption assistance and, when appropriate, what level of monthly subsidy the child is eligible to receive (Rule R512-43).~~

~~(2) The prospective adoptive family shall be made aware of available post adoption resources.~~

R512-41-9. Adoption Disruption/Removal of a Child from Adoptive Parent(s) Prior to Finalization.

~~(1) Child and Family Services shall consider removal of a child before an adoption is finalized if the adoptive parent(s) request removal or if serious circumstances impair the child's security or development.~~

~~(2) Prior to removal, Child and Family Services shall respond to the adoptive parent(s)' concerns in a timely manner, counsel with the adoptive parent(s), and, if possible and appropriate, offer further treatment, including intensive in-home services or temporary removal of the child from the home for respite purposes.~~

~~(3) When removal is recommended, the adoption committee shall review the placement progress and present situation, and shall decide to either continue placement with further services or to remove the child from the home. The Region Director will review and approve the decision.~~

~~(4) If the adoption committee decides to remove the child, a Notice of Agency Action shall be sent to the adoptive parent(s), notifying them of their due process rights. The adoptive parent(s) shall be offered the same rights as those offered a foster family regarding removal of a child (Rule R512-31).~~

~~(5) Child and Family Services will reconsider any potential kinship caregivers if the child is disrupted or removed from an adoptive placement or a permanent placement has not been identified.]~~

R512-41-9. Adoption Committee.

~~(1) An Adoption Committee will be appointed in each Child and Family Services region and will consist of at least three members to include senior-level Child and Family Services staff and one or more members from an outside agency with expertise in adoption or foster care.~~

~~(2) The Adoption Committee is responsible for deciding adoptive parent(s) who can best meet the needs of a child when the child is not residing with the family that will adopt. The Adoption Committee is also responsible for recommending removal of the child from a placement when indicated.~~

~~(3) Anyone who has information regarding the child and the prospective adoptive parents under consideration may be invited by the Adoption Committee to present information but not to participate in the deliberations.~~

~~(4) Any member of the Adoption Committee who has a potential conflict of interest must recuse himself or herself from the proceeding.~~

~~(5) The Adoption Committee will reach its decision through consensus. If consensus cannot be reached, the Adoption Committee will submit their recommendation to the region director for a decision.~~

~~(6) Child and Family Services will send written notification of selection to the adoptive parent(s).~~

~~(7) A family or individual that is not selected for an adoption placement of a specific child shall have no right to appeal the decision, unless the parent(s) not selected for the adoptive placement is the child's current foster parent(s) and the foster parent(s) have completed all requirements. If the foster parent(s) are not selected for the adoptive placement, the foster parent(s) due process rights for removal of a child apply (Rule R512-31).~~

~~(8) The adoption committee will make and retain a written record of their proceedings. All proceedings are confidential.~~

R512-41-10. Adoption Finalization and Post Adoption.

~~(1) Before an adoption is final, the adoption assistance committee shall assess if the child qualifies for adoption assistance and, when appropriate, what level of monthly subsidy the child is eligible to receive (Rule R512-43).~~

~~(2) The prospective adoptive family shall be made aware of available post adoption resources.]~~

R512-41-11. Adult Adoptee or Adoptive Parent(s) Request for Records.

~~(1) The adoption records of Child and Family Services shall be made available to the adoptive parent(s) or adult adoptee upon written request in accordance with the Government Records Access Management Act, Title 63G, Chapter 2. An adult adoptee may also register with the Utah Department of Health Mutual-Consent, Voluntary Adoption Registry, Section 78B-6-144 to attempt to contact biological family members.~~

R512-41-11. Information Regarding the Adoptive Parent(s).

~~(1) No identifying information regarding the adoptive parent(s) shall be released to birth families without the written consent of the adoptive parent(s).~~

KEY: child welfare, adoption

Date of Enactment or Last Substantive Amendment: ~~July 22, 2013~~2016

Notice of Continuation: January 28, 2014

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 62A-4a-205.6

**Human Services, Child and Family
Services
R512-43
Adoption Assistance**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40257

FILED: 03/10/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule modification is to bring the rule in line with current statute and practice.

SUMMARY OF THE RULE OR CHANGE: The content of the amendment is to make technical changes to the rule to bring it in line with current practice by explaining the criteria that a child with special needs must meet in order to receive Title IV-E Adoption Assistance.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-106 and Section 62A-4a-901 et seq.

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds Title 45, Chapter XIII, Parts 1356.41, published by Government Printing Office Online via GPO Access, 01/03/2007
- ◆ Adds Title 45, Chapter XIII, Parts 1356.40, published by Government Printing Office Online via GPO Access, 10/01/2009
- ◆ Adds Pub. Law No. 110-351, published by Government Printing Office, 10/07/2008
- ◆ Adds Title 42, Chapter 7, Section 673, published by U.S. Code Online via the Government Printing Office, 01/03/2007

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes do not increase workload that would require additional staff or other costs.
- ◆ **LOCAL GOVERNMENTS:** Local governments have no responsibility for services offered by Child and Family Services and are, therefore, not affected by this rule and will have no fiscal impact.
- ◆ **SMALL BUSINESSES:** Small businesses have no responsibility for services offered by Child and Family Services and are, therefore, not affected by this rule and will have no fiscal impact.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no expected fiscal impact for "persons other than small businesses, businesses, or local government entities" because funding requests for services offered by Child and Family Services come out of already-existing budgets.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Child and Family Services determined that there will be no compliance costs for affected persons because there are no specific costs involved with the changes being made to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/02/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2016

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.

R512-43. Adoption Assistance.

R512-43-1. Purpose and Authority.

(1) The purpose of the adoption assistance program is to aid an adoptive family to establish and maintain a permanent adoptive living arrangement for a child who qualifies for the program under state and federal law.

(2) The adoption assistance program is intended to provide a permanent family for a child in public foster care or who receives Supplemental Security Income (SSI) disability benefits by providing financial and medical assistance for the child's benefit and best interest to the family who adopts the child.

(3) Section 62A-4a-901, et seq. authorizes the state to provide adoption assistance and supplemental adoption assistance and Section 473, Social Security Act, authorizes federal adoption assistance. Section 473, Social Security Act (42 USC 673) as amended

by Public Law 110-351 (October 7, 2008), 45 CFR 1356.40 (October 1, 2009), and 45 CFR 1356.41 (October 1, 2009) are incorporated by reference.

(4) This rule is authorized by Section 62A-4a-102.

R512-43-2. Definitions.

In addition to terms defined in Section 62A-4a-902, the following terms are defined for purposes of this rule:

(1) Initiation of adoption proceedings means ~~[the earlier of]~~ (a) the date an ~~[Adoption Agreement]~~ Intent to Adopt a Specific Child is signed with Child and Family Services ~~[for placement of a child in the home]~~, or (b) the ~~[date an adoption petition is filed]~~ adoption finalization court date.

(2) Child in public foster care means a judicially removed child whose placement resulting in adoption was immediately preceded by protective, temporary, or legal custody with a State IV-E agency, or a child who was placed with a State IV-E agency through a Voluntary Placement Agreement, or the child of a minor parent in foster care.

(3) A child or youth who was taken into protective custody and, as a result of the protective episode, was placed with a relative who was given legal custody meets the definition of a child in public foster care.

(a) If the court orders Child and Family Services to continue to provide Protective Supervision Services for the family in making safety and permanency decisions for the child, including placement decisions and permanency goals, the child is eligible for adoption assistance if the child's permanency goal becomes adoption, if all other criteria in R512-43-3(1-4) are met.

(i) This may include a change in placement to another relative while the Protective Supervision Services continue to be court ordered.

(4) State IV-E agency means Child and Family Services or a public agency or tribal organization with whom Child and Family Services has an agreement in effect for foster care maintenance payments in accordance with Title IV-E, Section 42 USC 672.

(5) AFDC means the Aid to Families with Dependent Children program that was in effect on July 16, 1996.

(6) Child with a previous IV-E agreement means a child who was Title IV-E eligible in a previous adoption with a fully executed adoption assistance agreement originating in any state, and the previous adoption was legally dissolved or ended due to the death of both of the adoptive parents.

R512-43-3. General Requirements for Adoption Assistance.

(1) Qualification for adoption assistance is based upon the child meeting qualifying factors, not the adoptive family.

(2) A child qualifies for adoption assistance if all of the following are met:

(a) The state has determined that the child cannot or should not be returned home.

(b) The state can document that reasonable efforts were made to place the child for adoption without providing adoption assistance. An exception applies if the child has significant emotional ties with the adoptive family and it is not in the child's best interest to consider a different adoptive placement.

(c) The state determines the child meets the definition of a child with a special need in accordance with Section 62A-4a-901, et seq.

(i) A child under age five in public foster care meets the special need definition of "a child with a physical, emotional or mental disability" when the child is at risk to develop such a condition due to specific factors identified in the child's or birth parents' health and social histories.

(3) In determining eligibility for adoption assistance, there is no income eligibility requirement or means test for the adoptive parents.

(4) A child must be a U.S. citizen or qualified alien to receive adoption assistance.

(5) An application for adoption assistance is submitted to the regional adoption assistance committee on a form provided by Child and Family Services.

(6) Application for adoption assistance, approval, and completion of the adoption assistance agreement, including signatures of an adoptive parent and a representative from Child and Family Services, are to be completed prior to finalization of the adoption.

(7) Adoptive parents may request adoption assistance after an adoption is finalized by requesting a fair hearing through the Office of Administrative Hearings. Adoption assistance may only be granted after finalization when the conditions stated in R512-43-11-2(a) are met.

(8) Adoption assistance usually begins after finalization of an adoption. However, adoption assistance may be initiated at the time of placement if the child is legally free for adoption, the adoptive home is approved, adoption proceedings are initiated, an adoption assistance agreement is fully executed prior to placement, and foster care maintenance payments are not being provided for the child.

(9) An adoption assistance agreement shall be approved and have all required signatures before any payments may be made to an adoptive family or before state medical assistance may be initiated.

(10) A qualified child shall continue to be eligible to receive adoption assistance until a child reaches age 18 unless causes for termination apply as stated in R512-43-10. Assistance may be extended until a child reaches age 21 when the regional adoption assistance committee has determined that the child has a mental or physical disability that warrants continuing assistance.

(a) An extension of adoption assistance beyond age 18 is warranted if the child meets the criteria for services in the Department of Human Services, Division of Services for People with Disabilities.

(11) Child and Family Services is responsible for notifying a prospective adoptive family of the availability of adoption assistance when the family begins an adoptive placement of a qualified child in public foster care.

(12) The adoptive parents are responsible to notify Child and Family Services of any circumstances that may affect the child's eligibility for adoption assistance or eligibility for adoption assistance in a different amount.

R512-43-4. Reimbursement of Non-Recurring Adoption Expenses.

(1) A parent who adopts a child meeting all of the qualifying factors for adoption assistance listed in R512-43-3(2) may be reimbursed for non-recurring adoption expenses on behalf of the child.

(2) A parent may be reimbursed up to \$2,000 per child for allowable non-recurring expenses directly related to the legal adoption of a child with a special need. Reimbursement shall be limited to costs approved by the regional adoption assistance committee.

(3) Expenses may include reasonable and necessary adoption fees, court costs, adoption-related attorney fees, pre-placement adoptive evaluation, health and psychological examinations of adoptive parents, post-placement adoptive evaluation prior to adoption, and transportation and reasonable costs of lodging and food for the child and/or adoptive parents during the placement or adoption process.

(4) Adoptive parents are responsible to provide necessary receipts for reimbursement.

(5) Only costs that are incurred in accordance with State and Federal law and that have not been reimbursed from other sources or funds may be included.

(6) Non-recurring adoption expenses are reimbursable through Title IV-E Adoption Assistance. The child does not have to be determined Title IV-E eligible for the parents to receive this reimbursement.

R512-43-5. Monthly Subsidy.

(1) Qualifying for a Monthly Subsidy.

A child qualifies for a monthly subsidy when the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI, or the child had a previous IV-E agreement or Utah state adoption assistance agreement.

(c) The child's eligibility for SSI disability benefits is established no later than the time adoption proceedings are initiated.

(2) Guiding Principles for Monthly Subsidies.

(a) The amount of monthly subsidy to be paid for a child is based on the child's present and long-term care and treatment~~[-and care]~~ needs and available resources, including the family's ability to meet the needs of the child. A combination of the parents' resources and subsidy should cover the ordinary and special needs expenses of the child projected over an extended period of time.

(b) The amount of the monthly subsidy may not exceed the payment that would be made if the child was placed in a foster family home at the point in time when the agreement is being initiated or revised.

(c) The amount of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet those needs changes. The family or the Child and Family Services [ease]worker may initiate a change in the amount of subsidy at any time when needs or resources change.

(d) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and the Child and Family Services [ease]worker. Prior to subsidy negotiation, [The Adoptive Parent Statement of Disclosure items]the adoptive parents must [be]have reviewed the child's case file information and discussed in depth [by the caseworker and adoptive parent prior to subsidy negotiation]with the Child and Family Services worker what will be needed after the child leaves state's custody.

(e) The amount of the monthly subsidy is subject to the approval of the regional adoption assistance committee. If the requested amount is not granted, the adoptive parent has a right to appeal as stated in R512-43-11.

(3) Process for Determining Monthly Subsidy Amount.

(a) Utilizing the level of need criteria specified in R512-43-5(4), the Child and Family Services [ease]worker and adoptive family identify the child's level of need.

(b) The Child and Family Services [ease]worker and adoptive family identify the applicable monthly subsidy payment range, according to the child's specified level of need, as specified in R512-43-5(5).

(c) The Child and Family Services [ease]worker and adoptive family negotiate the amount of monthly subsidy to be requested from the regional adoption assistance committee. The requested monthly subsidy amount may not exceed the maximum amount for the specific level of need identified for the child nor the maximum amount that the child would receive if placed in a foster family home.

(d) The identified need level for the child and requested amount of monthly subsidy is presented to the regional adoption assistance committee for approval. If the requested amount is not approved or is reduced by the committee, Child and Family Services must send a written notice to the adoptive parents within 30 days informing them of the process to request a fair hearing.

(4) Determining Child's Level of Need.

(a) The level of need is determined by considering the child's age, history, physical, mental, emotional, and social functioning and needs, and any other relevant factors. Frequency of occurrence, duration, severity, and number of needs or problem areas are also considered.

(b) The presence of a particular issue listed within a designated level does not mandate that the child be categorized at that level. The child's needs, taken as a whole, determine the level selected for the child.

(c) Level of need is classified into three categories.

(i) Level One applies to a child with a minimal number and severity of needs. It is expected that most of these issues will improve with time, and significant improvement may be anticipated over the course of the adoption. For children ages five and under issues may include, but are not limited to: feeding problems, aggressive or self destructive behavior, victimization from sexual abuse, victimization from physical abuse; or no more than one developmental delay in fine motor, gross motor, cognitive or social/emotional domains. For children ages 6-18, issues may include but are not limited to: social conflict, physical aggression, minor sexual reactivity, need for education resource classes or tutoring, some minor medical problems requiring ongoing monitoring, or mental health issues requiring time limited counseling.

(ii) Level Two applies to a child with a moderate number and severity of needs. It is expected that a number of these issues are long-term in nature and the adoptive family and child will be working with them over the course of the adoption, and some may intensify or worsen if not managed carefully. Outside provider support will probably continue to be needed during the course of the adoption. For children ages five and under, issues may include, but are not limited to: developmental delays in two or more areas of fine motor, gross motor, cognitive or social/emotional domains; diagnosis of failure to thrive; moderate genetic disease or physical [handicapping]disability condition; or physical aggression expressed several times a week, including superficial injury to self or others. For children ages 6-18, issues may include, but are not limited to: daily social conflict or

serious withdrawn behavior; moderate risk of harm to self or others due to physically aggressive behavior; emotional or psychological issues with a ~~[DSM-IV]~~ mental health diagnosis requiring ongoing counseling sessions over an extended period of time; moderate sexual reactivity or perpetration; chronic patterns of being destructive to items or property; cruelty to animals; mild ~~[mental-retardation-or]~~ cognitive disability, autism, or fetal alcohol spectrum disorder with ongoing need for special education services; and physical disabilities requiring ongoing attendant care or other caretaker support.

(iii) Level Three applies to a child with a significant number or high severity of needs. It is expected that these issues will not moderate and may become more severe over time. The child's level of need may at some time require personal attendant care or specialized care outside of the home, when prescribed by a professional. For children ages five and under issues may include, but are not limited to: severe life threatening medical issues; moderate or severe ~~[retardation or]~~ cognitive disability, autism, or fetal alcohol spectrum disorder; serious developmental delays in three or more areas of fine or gross motor, cognitive or social/emotional domains; anticipated need for ongoing support for activities of daily living, such as feeding, dressing and self care; or high levels of threat for harm to self or others due to aggressive behaviors. For children ages 6-18 issues may include, but are not limited to: moderate or severe retardation or autism; life threatening medical issues; severe physical disabilities not expected to improve over time; predatory sexual perpetration; high risk of serious injury to self or others due to aggressive behavior; serious attempts or threats of suicide; severely inhibiting ~~[DSM-IV]~~ diagnosed mental health disorders diagnosed within the past year that limit normal social and emotional development, such as [an Axis-5 GAF score under 50; or] a need for ongoing self contained or special education services.

(d) The regional adoption assistance committee must approve the level of need identified for the child.

(e) A child's need level may be increased in severity by one level if the adoption assistance committee determines that the child's permanency may be compromised due to financial barriers to the child's adoption and if at least one of the following circumstances apply:

(i) The child has been in state custody for longer than 24 months.

(ii) The child is nine years of age or older.

(iii) The child is part of a sibling group of three or more children being placed together for the purposes of adoption.

(5) Identifying Amount for Monthly Subsidy Based Upon the Child's Level of Need.

(a) Each level of need corresponds to a dollar range in the amount of monthly subsidy that may be paid for a child, with the specific amount based upon the individual child's needs and the family's ability to meet those needs.

(b) The monthly subsidy amount for an individual child may not exceed the maximum amount for the payment range applicable to the child's level of need.

~~(c) A family may choose to defer receipt of a monthly subsidy for which a child qualifies, with the option to initiate a monthly subsidy at a later date[,-or-].~~

~~(d) A family may choose to receive a lesser amount than would be allowable for the level of need at a given point in time.~~

~~(e)(e)~~ Monthly subsidy payments for a child's needs categorized as Level One range from zero to 40 percent of the

maximum maintenance payment that may be paid for a child in a foster family home.

~~(f)(f)~~ A family may choose to receive a lesser amount than would be allowable for the child's level of need at a given point in time.

~~(g)(g)~~ Monthly subsidy payments for a child's needs categorized as Level Two range from 20 to 70 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

~~(h)(h)~~ Monthly subsidy payments for a child's needs categorized as Level Three range from 50 to 100 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

~~(i)(i)~~ For extraordinary, infrequent, or uncommon documented needs that cannot be covered by a monthly subsidy or state medical assistance, refer to supplemental adoption assistance in R512-43-7.

(6) Funding Sources and Eligibility for Monthly Subsidy.

(a) The two funding sources for the monthly subsidy are Title IV-E Adoption Assistance and state adoption assistance funds. The child's eligibility determines which funding source is used for payment.

(b) Title IV-E Adoption Assistance shall be considered first for the monthly subsidy. To receive Title IV-E Adoption Assistance, a child with special needs shall meet at least one of the following Federal requirements:

(i) A child is determined eligible for SSI by the Social Security Administration prior to the initiation of adoption proceedings.

(ii) A child in foster care who meets the age criteria defined by the federal fiscal year qualifies for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

(iii) A child in foster care who has been in foster care for any previous 60 consecutive months may qualify for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

(iv) A child in foster care who is a sibling of another child in foster care who qualifies under the enhanced age criteria and is being adopted into the same family may qualify for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

~~(v)(v)~~ The removal home for the child in public foster care received, or would have been eligible to receive, AFDC prior to removal, and the child was removed from the home as a result of a judicial determination that remaining in the home would be contrary to the child's welfare.

~~(vi)(vi)~~ The child was voluntarily placed for foster care with the state and:

(A) Was or would have been AFDC eligible at the time of removal if application had been made,

(B) The child lived with a specified relative within the six months prior to the voluntary placement, and

(C) Title IV-E foster care maintenance payments were made on behalf of the child.

~~(vii)(vii)~~ The child's needs were met through foster care maintenance payments made to and for the child's minor parents as provided by Subsection 475(4)(B) of the Social Security Act.

~~(viii)(viii)~~ The child had a previous IV-E adoption assistance agreement.

(c) State adoption assistance funds may be used for the monthly subsidy if the qualified child is not eligible for Title IV-E Adoption Assistance.

(7) Use of the monthly subsidy. The monthly subsidy may be used according to the parents' discretion. Some examples of the uses of the monthly subsidy payment are medical, dental, or mental health services not paid for by the state medical assistance or family insurance, special equipment for physically or mentally challenged children, respite care, child care, therapeutic equipment, minor renovation of the home to meet special needs of the child, damage and repairs, speech therapy, tutoring, specialized preschool based on needs of the child, private school, exceptional basic needs such as special food, clothing, and/or shelter, visitations with biological relatives, cultural and heritage activities and information.

R512-43-6. State Medical Assistance.

(1) A child qualifies for state medical assistance as a component of adoption assistance when all of the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI disability benefits, or the child had a previous IV-E adoption assistance agreement or Utah state adoption assistance agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(c) The child meets state medical assistance citizenship requirements.

(2) A qualified child may receive state medical assistance through an adoption assistance agreement without also receiving a monthly subsidy payment.

(3) The adoptive family must meet all Medicaid requirements, including application, citizenship verification, and annual review requirements in order for Medicaid to be initiated and continue throughout the period of the adoption assistance agreement.

R512-43-7. Supplemental Adoption Assistance.

(1) A child meeting all qualifying criteria for a monthly subsidy and for whom an adoption assistance agreement for a monthly subsidy or state medical assistance is in effect may qualify for supplemental adoption assistance.

(2) Supplemental adoption assistance may only be used for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

(3) Supplemental adoption assistance is not an entitlement, and will be granted only when justified by unique needs of the child and when all other resources for which a child is eligible have been exhausted.

(4) Supplemental adoption assistance requests up to \$3,000 will be considered and are subject to the approval of the regional adoption assistance committee.

(5) Supplemental adoption assistance requests from \$3,001 to \$10,000 shall be considered by the appropriate regional advisory committee established under Subsection 62A-4a-905(2).

(6) Supplemental adoption assistance requests exceeding \$10,001 shall be considered by a state level advisory committee with the same membership composition as the regional advisory committees.

(7) Recommendations from the advisory committee are subject to the approval of the Region Director or designee.

(8) Any obligation made or expense incurred by a family prior to approval shall not be reimbursed with supplemental adoption assistance funds unless approval is granted by the Region Director.

(9) A request for an amendment or extension of an existing supplemental adoption assistance agreement will be reviewed by the same committee that reviewed the initial request. If the total amount of multiple requests in a year is \$3,000 to \$10,000, the request shall be submitted to the appropriate regional advisory committee. If the request exceeds \$10,000, the request shall be submitted to the state level advisory committee.

(10) Supplemental adoption assistance is subject to the availability of state funds appropriated for adoption assistance.

R512-43-8. Regional Adoption Assistance Committee.

(1) Each region shall establish at least one regional adoption assistance committee.

(2) The regional adoption assistance committee shall be comprised of at least five members, and a minimum of three members must be present for making decisions regarding adoption assistance. Decisions shall be made by consensus.

(3) Members of the committee may include the following:

(a) Chairperson;

(b) Clinical consultant or casework supervisor;

(c) Regional budget officer or fiscal representative;

(d) Allied agency representative from agencies such as a community mental health center, private adoption agency, or other agencies within the department;

(e) Regional administrator or other staff with relevant responsibilities;

(f) Adoptive or foster parent.

(4) Responsibilities of the regional adoption assistance committee include:

(a) Verification that a child qualifies for adoption assistance,

(b) Approval for reimbursement of allowable, reasonable non-recurring costs,

(c) Approval of level of need and amount of monthly subsidy for initial requests, changes, amendments, and renewals,

(d) Approval of supplemental adoption assistance up to \$3,000,

(e) Extension of adoption assistance up to age 21 for a qualifying child,

(f) Renewal of adoption assistance, and

(g) Documentation of committee decisions.

R512-43-9. Adoption Assistance Review.

(1) The adoption assistance agreement for a monthly subsidy or state medical assistance shall continue until the month of the adopted child's 18th birthday.

(2) An agreement for supplemental adoption assistance exceeding \$3,000 shall be reviewed according to a time frame determined on a case by case basis by the appropriate regional advisory committee.

R512-43-10. Termination of Adoption Assistance.

(1) An adoption assistance agreement for a monthly subsidy or state medical assistance shall be terminated if any of the following occur:

(a) The terms of the adoption assistance agreement are concluded.

(b) The adoptive parents request termination.

(c) The month following the child's 18th birthday, unless approval has been given by the adoption assistance committee to continue until the month following the child's 21st birthday due to mental or physical disability.

(d) The child dies.

(e) The adoptive parents die.

(f) The adoptive parents' legal responsibility for the child ceases.

(g) The state determines that the child is no longer receiving financial support from the adoptive parents.

(h) The child enters the military.

(i) The child marries.

(2) Termination of state medical assistance is subject to the policies of the Division of Health Care Financing.

(3) Supplemental adoption assistance shall terminate when an adoption assistance agreement for a monthly subsidy or state medical assistance is terminated, the terms of the agreement are concluded, the authorizing committee determines that the services funded with supplemental funds are no longer effective or appropriate based upon an independent review by a qualified provider, or if lack of availability of state funding prevents continuation. Written notice as described in R512-43-10(4) shall be provided at least 30 days before funding is discontinued due to lack of availability of state funding appropriated for adoption assistance or due to determination that services are no longer effective or appropriate.

R512-43-11. Fair Hearings.

(1) Fair Hearing Request.

A written request for a fair hearing may be submitted within 10 working days after receiving a Department of Human Services/Child and Family Services decision to the Department of Human Services if:

(a) The adoption assistance application is denied;

(b) The adoption assistance application is not acted upon with reasonable promptness;

(c) Adoption assistance or supplemental adoption assistance is reduced, terminated, or changed without the concurrence of the adoptive parents;

(d) The amount of adoption assistance or supplemental adoption assistance approved was less than the amount requested by adoptive parents;

(e) Adoption assistance was not requested prior to finalization of the adoption and one of the criteria in R512-43-11(2)(a) applies.

(2) Post Finalization Request Fair Hearing.

(a) The fair hearing officer may approve appropriate state or federal adoption assistance for post finalization requests if one of the following is met:

(i) Relevant facts regarding the child, the biological family, or child's background were known but not presented to adoptive parents prior to finalization.

(ii) A denial of assistance was based upon a means test of the adoptive family.

(iii) An erroneous state determination was utilized to find a child ineligible for assistance.

(iv) The state or adoption agency failed to advise adoptive parents of the availability of assistance.

(b) The adoptive parents bear the burden of documenting that the child meets the definition of a child with a special need and that one of the criteria in R512-43-11(2)(a) applies. The state may provide corroborating facts to the family or the fair hearing officer.

R512-43-12. Interstate Adoption Assistance.

(1) Child and Family Services is responsible to determine if a child in Utah public foster care qualifies for adoption assistance when the child is placed in an adoptive home in another state. If the child qualifies, Child and Family Services provides adoption assistance regardless of the state of residence of the adoptive family and child.

(2) If a child with a previous IV-E adoption assistance agreement enters public foster care because the adoption was dissolved or ended due to the result of the death of the parents, the state in which the child is taken into custody in public foster care is responsible to provide adoption assistance in a subsequent adoption.

(3) If a child with a previous IV-E adoption assistance agreement does not enter public foster care when the adoption dissolved or ended due to the death of both parents, the new adoptive parent is responsible to apply for adoption assistance in the new adoptive parent's state of residence.

(4) A parent desiring to adopt an out-of-state child who is not in public foster care but is receiving SSI disability benefits shall apply for adoption assistance in the parent's state of residence.

(5) An adoption assistance agreement remains in effect regardless of the state of residence of the adoptive parents as long as the child continues to qualify for adoption assistance.

(6) If a needed service specified in the agreement is not funded by the new state of residence, the state making the original adoption assistance payment remains financially responsible for paying for the specific service.

KEY: adoption, child welfare, foster care

Date of Enactment or Last Substantive Amendment: [~~March 10, 2014~~2016]

Notice of Continuation: January 25, 2016

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-106; 62A-4a-901 through 62-4a-907

Human Services, Child and Family Services **R512-44**

Choose Life Adoption Support Restricted Account

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 40258

FILED: 03/10/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule modification is to bring the rule in line with current statute and practice.

SUMMARY OF THE RULE OR CHANGE: The content of the amendment is to make technical changes to the rule to bring it in line with current titles and language.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-1a-418 and Section 41-1a-419 and Section 41-1a-422 and Section 62A-4a-102 and Section 62A-4a-311 and Section 62A-4a-608 and Section 63J-1-504 and Section 63J-1-602.4

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes do not increase workload that would require additional staff or other costs.

◆ **LOCAL GOVERNMENTS:** Local governments have no responsibility for services offered by Child and Family Services and are, therefore, not affected by this rule and will have no fiscal impact.

◆ **SMALL BUSINESSES:** Small businesses have no responsibility for services offered by Child and Family Services and are, therefore, not affected by this rule and will have no fiscal impact.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no expected fiscal impact for "persons other than small businesses, businesses, or local government entities" because funding requests for services offered by Child and Family Services come out of already-existing budgets.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Child and Family Services determined that there will be no compliance costs for affected persons because there are no specific costs involved with the changes being made to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at hjonesrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/02/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2016

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.**R512-44. Choose Life Adoption Support Restricted Account.****R512-44-1. Purpose and Authority.**

(1) The purpose of this rule is to specify the requirements for carrying out the purposes of the Choose Life Adoption Support Restricted Account as outlined in Section 62A-4a-608, with the funding specified in Section 41-1a-418.

(2) This rule is authorized by Section 62A-4a-102.

R512-44-2. Definitions.

(1) For the purposes of this Rule:

(a) "Administrator" means the employee of Child and Family Services appointed by the Director to administer the Choose Life Adoption Support Restricted Account.

(b) "Child and Family Services" means the Division of Child and Family Services.

(c) "Director" means the Director of Child and Family Services.

(d) "RFP" means Request for Proposal.

R512-44-3. Scope.

(1) Funds from the Choose Life Adoption Support Restricted Account shall be used for charitable organizations that support, promote, and provide education about adoption. This may occur by producing and distributing educational and promotional materials on adoption, conducting educational courses on adoption, and providing other programs that support adoption as specified in Section 62A-4a-608.

R512-44-4. Responsibilities of the Director.

(1) In addition to the responsibilities defined in Section 62A-4a-608, the Director shall:

(a) Designate a staff member to serve as the Administrator of the Choose Life Adoption Support Restricted Account.

(2) Approve policies of the Choose Life Adoption Support Restricted Account.

R512-44-5. Funding Limitations and Requirements.

(1) Child and Family Services shall distribute the funds in the Choose Life Adoption Support Restricted Account to one or more charitable organizations that:

(a) Qualify as being tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(b) As part of their primary mission, include the support, promotion, and education [of/about adoption [programs]of children; and

(c) Are licensed or registered to do business within the state in accordance with Utah state law.

(2) Funding for individual projects shall be based on yearly revenues available in the restricted account. If unobligated account revenues for a given year are less than \$50,000, Child and Family Services may forego the RFP process for that year.

(3) Each program or project funded through the Choose Life Adoption Support Restricted Account shall provide a dollar-for-dollar match from private, non-government sources.

(a) In-kind contributions may be used as part of the match requirement. No more than 50 percent of the match requirement may be in-kind.

(b) Items that may be used as in-kind match are contributed services of support personnel, office space, furniture and equipment, utility costs, donated printing, vehicles, and contributed services of professional personnel including physicians, nurses, social workers, psychologists, educators, public accountants, and lawyers who are performing services for which they would normally be paid. The source of original funding for this in-kind match shall not be state or federal monies.

(4) Of the total monies available for allocation in the Choose Life Adoption Support Restricted Account, awards shall be granted according to the allocation plan approved by the Director.

R512-44-6. Proposal Requirements.

(1) A RFP shall be developed by the Administrator based upon the approved allocation plan and adoption support priorities, and in accordance with State Purchasing Guidelines. The RFP shall specify the purposes and eligibility requirements for projects or programs to be funded through the Choose Life Adoption Support Restricted Account. The proposal requirements may vary from year to year.

(2) The RFP shall be disseminated through the online State Purchasing Bid Program. Project or program proposals shall be submitted as specified in the RFP.

R512-44-7. Procedures in Selecting Programs or Projects to be Supported by the Choose Life Adoption Support Restricted Account.

(1) Proposals received by Child and Family Services in response to the RFP shall be reviewed according to the criteria specified in the RFP, consistent with Section 62A-4a-608.

(2) The Administrator or Child and Family Services contract specialists shall negotiate contracts with successful offerors, based on State Purchasing Guidelines.

R512-44-8. Research.

(1) Choose Life Adoption Support Restricted Account funds may be used for research programs consistent with Section 62A-4a-608 at funding levels deemed appropriate. Basic or applied research programs or projects that provide empirical data that help support adoption of children or inform adoption education may be funded.

R512-44-9. Evaluation.

(1) Each program or project funded through the Choose Life Adoption Support Restricted Account shall be evaluated by Child and Family Services at least once each year to determine if the purposes and goals of the project have been met.

KEY: adoption, Choose Life Adoption Support

Date of Enactment or Last Substantive Amendment: [~~October 26, 2011~~]2016

Authorizing, and Implemented or Interpreted Law: 41-1a-418; 41-1a-419; 41-1a-422; 62A-4a-102; 62A-4a-311; 62A-4a-608; 63J-1-504; 63J-1-602.4

Natural Resources, Water Rights **R655-3** Reports of Water Rights Conveyance

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 40242

FILED: 03/03/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The current rule requires clarification and update to current industry practice.

SUMMARY OF THE RULE OR CHANGE: These rules are issued pursuant to Section 73-1-10 and Subsection 73-2-1(4) (a), which provides that the state engineer shall adopt rules that specify when a water right owner is authorized to prepare a Report of Conveyance to the state engineer; the kinds of information required in such reports; and the procedures for processing such reports. A brief summary of what was in the old rule that is not in the new version of the rule is mainly a list of examples that have been omitted and are now to be included in a training manual rather than the rule. Items that are in the new rule that are not in the old rule are an expanded list of definitions from the old rule; establishment of when maps are required and standards for title maps; and a clarification of the use of an addendum to update title as now authorized by statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-1-10 and Subsection 73-2-1(4)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No cost is involved--Clarification of processing does not require a dollar figure.
- ◆ **LOCAL GOVERNMENTS:** No cost is involved--Clarification of processing does not require a dollar figure.
- ◆ **SMALL BUSINESSES:** No cost is involved--Clarification of processing does not require a dollar figure.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost is involved--Clarification of processing does not require a dollar figure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost is involved--Clarification of processing does not require a dollar figure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact--Clarification of process procedures does not require a dollar figure.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
 WATER RIGHTS
 ROOM 220
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/02/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2016

AUTHORIZED BY: Michael Styler, Executive Director

R655. Natural Resources, Water Rights.
[R655-3. Reports of Water Right Conveyance.
R655-3-1. Scope and Purpose.

These rules are issued pursuant to Section 73-1-10 which provides that the state engineer shall adopt rules that specify when a water right owner is authorized to prepare a Report of Conveyance to the state engineer; the kinds of information required in such reports; and the procedures for processing such reports.

R655-3-2. Definitions.

~~BENEFICIAL USE~~ – the basis, the measure and the limit of a water right. It is the amount of water use allowed by the water right expressed in terms of the purpose(s) to which the water may be applied. For example, in the case of irrigation, the beneficial use is expressed as the number of acres that may be irrigated by the water right (e.g. 40 acres).

~~CHANGE APPLICATION~~ – as allowed by Section 73-3-3, any person entitled to the use of water may make permanent or temporary changes in the point of diversion, place of use, or nature of use of a water right by making application upon forms furnished by the state engineer

~~DIVERSION LIMIT~~ – the total volume of water in acre feet or the flow rate in cubic feet per second which may be diverted as allowed by the water right to meet the needs of the beneficial uses authorized by the water right.

~~DIVISION~~ – the Utah Division of Water Rights within the Department of Natural Resources.

~~PROFESSIONAL~~ – for the purposes of this rule, a person, as specified in Section 73-1-10, who is licensed in Utah as an attorney, a professional engineer, a title insurance agent, or a professional land surveyor.

~~REPORT OF CONVEYANCE~~ – a report of water right conveyance to the state engineer as required by Section 73-1-10.

R655-3-3. When a Water Right Owner is Authorized to Prepare a Report of Conveyance.

A water right owner may prepare a Report of Conveyance without the certification of a professional in the situations described below in subsections 3.2, 3.3, and 3.4. In all other situations, a Report of Conveyance must be prepared by or under the direct supervision of, and certified by, a professional:

3.1 On each of the documents (deed, marriage certificate, divorce decree, death certificate, or probate document) required in the situations described in subsections 3.2, 3.3, and 3.4, the name appearing on the document (the grantor in the case of a deed) must be exactly the same as the name of the water right owner as shown on the division's records. If there are differences in the names, the discrepancy may be addressed by attaching to the Report of Conveyance affidavits executed by the appropriate parties asserting that the persons named are one and the same.

3.2 Ownership changes which involve simple water rights conveyances:

3.2.1 A deed which conveys an entire water right and which specifically identifies the water right being conveyed by the state engineer's water right number (for example 43-1638):

3.2.2 A deed which conveys more than one water right and which meets the criteria of paragraph 3.2.1 for each water right conveyed:

3.2.3 A deed which conveys a portion of a water right and which conforms to the following suggested Water Right Deed format:

3.2.3.1 The deed must be clearly labeled "WATER RIGHT DEED":

3.2.3.2 The deed must contain standard warranty deed or quit claim deed conveyance language:

3.2.3.3 The deed must be limited to the conveyance of water rights and must convey only one water right:

3.2.3.4 The deed must contain all of the information necessary to clearly identify the water right conveyed. The deed must show the water right number. If this interest in the water right has been segregated from another water right, the deed must show the currently assigned water right number. The water right number will be the basis for identifying the water right, however, the deed may also show other numbers pertinent to the water right such as a diligence claim number, an application number, an award number from a decree, etc.

3.2.3.5 The deed must name a grantee. (The name of the grantee as shown on the deed will be the name used to update the division's records.)

3.2.3.6 The deed must show the current mailing address for the grantee. (This will be the address to which the division will mail official notices regarding administrative actions on the water right.)

3.2.3.7 The deed must describe the beneficial uses conveyed by type and amount. For example:

TABLE 1

— Irrigation	38.50 acres
— Stockwatering	10 cattle or equivalents
— Domestic	1 family

(The division will use the beneficial use information to update the water right ownership.) The volume of water conveyed in acre feet or the flow rate conveyed in cubic feet per second or gallons per minute, is not required on the deed. However, if it is shown on the deed, it must be consistent with the beneficial use(s) shown on the deed.

3.2.3.8 If there are multiple grantors and/or multiple grantees, the deed must clearly indicate the interest conveyed from each grantor and/or the interest acquired by each grantee.

3.2.3.9 The deed must list by number any approved or unapproved pending change applications which are associated with the water right. The deed must also describe the type and amount of beneficial use associated with each of these applications that is being conveyed with the water right. For example:

TABLE 2

— Irrigation	20.50 acres
— Stockwatering	5 cattle or equivalents
— Domestic	1 family

3.2.3.10 The deed must be signed by all grantors, notarized, and recorded in the county where the water is diverted and in the county where the water is used. If the water is diverted or used in more than one county, the deed must be recorded in each county where the water is diverted or used.

3.2.4 Reports of Conveyance prepared by water right owners may be based on more than one deed in the chain of deeds as long as each deed complies with the requirements of 3.2.1, 3.2.2, or 3.2.3.

3.3 Name changes which are due to marriage or divorce

3.3.1 In the case of marriage, a water right owner's name may be changed from the prior or maiden name to the married name. The Report of Conveyance must be accompanied by a copy of the marriage certificate.

3.3.2 In the case of divorce, a water right owner's name may be changed from the married name to the prior or maiden name. The Report of Conveyance must be accompanied by a copy of the divorce decree.

3.3.3 To add or remove a spouse, the water right ownership may be updated according to the procedure described in 3.2 above.

3.4 Ownership changes which are due to the death of the water right owner

3.4.1 When the water right is held in joint tenancy, the ownership may be updated to remove the name of the deceased joint tenant. The Report of Conveyance must be accompanied by a copy of the death certificate.

3.4.2 When the water right is not held in joint tenancy and there is only one successor to the deceased and the probate document clearly defines the distribution of the estate, the ownership may be updated to the successor. The Report of Conveyance must be accompanied by a copy of the probate document.

R655-3-4. Content of the Report of Conveyance.

A Report of Conveyance must have sufficient documentation presented in a standard statement format to

demonstrate the chain of title connecting the owner as shown on the Division's water right records to the person currently claiming ownership of all or a portion of the water right. The Report of Conveyance shall be submitted on forms provided by the state engineer. The information required in a Report of Conveyance for most ownership transactions includes the information described below and any other information deemed necessary by the state engineer to process the report.

4.1 Information required on all Reports of Conveyance

4.1.1 The type of conveyance document.

4.1.2 The date the document was signed and the county recorder information.

4.1.3 The grantor name(s) as it appears on the conveyance document.

4.1.4 The grantee name(s) exactly as it appears on the conveyance document.

4.1.5 The current mailing address of the grantee.

4.1.6 Any pending change applications or non-use applications associated with the conveyance document.

4.1.7 Any special conditions of the conveyance document

4.1.8 Unless the Report of Conveyance is prepared by the water right owner as allowed by R655-3-3, it must include a certification by a professional stating that (s)he has prepared or supervised the preparation of the Report of Conveyance, that the report is true and accurate to the best of the preparer's knowledge, and that the attached documents evidence the ownership interest of the grantee. The certification must include the professional's name, profession, license number, and phone number. The certification also requires the name and phone number of the grantee.

4.2 In addition to the information described in 4.1, a Report of Conveyance which involves conveyance of only a portion of the water right must also include the following information:

4.2.1 The amount and type of each beneficial use that was conveyed by this document.

4.2.2 If applicable, the amount of each type of beneficial use associated with any pending change that was conveyed by the documents.

4.2.3 The diversion limit conveyed as applicable (see sub section 3.2.3.7).

4.3 The supporting information which must accompany each Report of Conveyance include the following items:

4.3.1 Maps (if needed to establish water right appurtenance to land or to establish the portion of the water right conveyed by appurtenance)

4.3.2 Any explanatory narrative deemed necessary by the certifier.

4.3.3 Any necessary affidavits

4.3.4 Copies of all conveyance documents listed on the summary sheet.

4.3.4.1 Conveyance documents (deeds, etc.) must bear county recorder's stamp with all recording information (document number, book, page, recording date, etc.):

4.3.4.2 Documents must be legible.

4.3.4.3 Documents must be arranged in chronological order by recording date/number.

R655-3-5. Procedures for Processing a Report of Conveyance.

5.1 Upon receiving a Report of Conveyance and the prescribed fee, the state engineer shall review the Report to see that it

is acceptably complete. A Report of Conveyance is acceptably complete if the Report includes all the information and material required in section R655-3-4 which is necessary to update the water right ownership records of the state engineer to the name of the person claiming water right ownership and which does not conflict with other water right ownership information of record with the state engineer.

5.2 If a Report of Conveyance is acceptably complete, the state engineer shall file the Report and update the water right ownership records according to the Report.

5.3 If a Report of Conveyance is not acceptably complete, the state engineer shall return the Report with an explanation of why it is not acceptably complete. The state engineer may not file the Report and update the water right ownership records unless the Report is resubmitted with the necessary information and material.]

R655-3. Reports of Water Right Conveyance.

R655-3-1. Scope and Purpose.

These rules are issued pursuant to Utah Code Section 73-1-10 and 73-2-1(4)(a) which provides that the state engineer shall adopt rules that specify when a water right owner is authorized to prepare a Report of Conveyance to the state engineer; the kinds of information required in such reports; and the procedures for processing such reports.

R655-3-2. Definitions.

APPURTENANCE -- A right or improvement to a property that passes with the property upon the transfer of the property. As applied to water rights, it is as described in Utah Code Section 73-1-11.

APPROPRIATION -- an application seeking to appropriate water pursuant to Utah Code Section 73-3-2.

BENEFICIAL USE - the basis, the measure and the limit of a water right. It is the specific use(s) authorized under a water right expressed in terms of the purpose(s) to which the water may be applied and the quantity of that purpose. For example, in the case of irrigation, the beneficial use is expressed as the number of acres that may be irrigated (e.g. 11.22 acres).

CHAIN OF TITLE -- A series of deeds or other properly filed and recorded documents which demonstrate the transfer of a water right or land with appurtenant water rights from the owner listed on records of the Division of Water Rights as grantor through a chronological succession of transfer documents where the grantee subsequently conveys to successive grantees the same water right ending with the grantee listed as new owner on the Report of Water Right Conveyance.

CHANGE APPLICATION -- an application authorized to be made under Utah Code Section 73-3-3 to change the point of diversion, place of use, nature of use, period of use or storage of a water right.

DIVERSION LIMIT - the total volume of water in acre-feet or the flow rate in cubic feet per second which may be diverted as allowed by the water right to supply the needs of the beneficial uses authorized by the water right.

DIVISION - the Utah Division of Water Rights within the Department of Natural Resources.

EXCHANGE APPLICATION -- as authorized under Utah Code Section 73-3-20, an application to allow water from one source to be exchanged for water from another source typically utilizing a reservoir to store water that will be released to offset the impacts of water diverted from another source such as a well. Exchanges are a conditional right rather than a modification of the underlying rights.

The water may be exchanged to the extent it is not used under the underlying right. The right to exchange may be conveyed either through deed or by appurtenance but the underlying right is often held separately or exists through contract with another party and is not conveyed as an appurtenance of the exchange right. One may update ownership of the exchange right on state engineer records, but if control of the underlying right is lost through termination of a contract or otherwise, the state engineer may lapse the exchange right if the applicant has lost a legal interest in the underlying right used to facilitate the exchange (see UC 73-3-20(3)).

PLACE OF USE -- the specific acreage where water under a water right may be placed to beneficial use as described on the records of the State Engineer or a decree.

PROFESSIONAL - for the purposes of this rule, a person authorized to submit a Report of Conveyance as specified in Utah Code Section 73-1-10. A professional must be licensed in Utah as an attorney, a professional engineer, a title insurance producer, or a professional land surveyor.

REPORT OF CONVEYANCE (ROC) - a report of water right conveyance to the state engineer as required by Section 73-1-10.

SHARE STATEMENT - A water right file created on state engineer records for purposes of administration in instances where the owner of shares of stock in a water company is authorized under statute to file an application (nonuse or change applications) based on stock ownership. Shares of Stock do not transfer under rules of other rights to use water but transfer as securities as set forth in Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities. Water Right Applications based on share statements are a conditional right. Rights under the application transfer as other interests in water rights but are separate from ownership of the underlying shares of stock upon which the application is based. If an ownership interest in the underlying shares of stock is lost or the shareholder fails to complete conditions imposed by the company to maintain the shares in good standing the state engineer is directed (UC 73-3-3.5(12)) to "reverse" or terminate the approval of the application upon petition of the water company which issued the shares of stock.

SOLE SUPPLY -- means the amount of Beneficial Use allowed under a particular water right when used alone and separate from all Supplemental Rights. If a water right has been assigned to more than one Water Use Group, the Sole Supply of the water right is the sum of its Beneficial Use Amounts.

SUPPLEMENTAL GROUP -- Also referred to as a Water Use Group, means one or more water rights listed together and assigned a unique number in the records of the State Engineer as being applied to a common Beneficial Use. The unique number referred to is shown on the Division's computer data base as Supplemental Group No.

WATER RIGHT NUMBER -- a file number assigned by the Division beginning with a two digit prefix associated with a specific geographic area designated by the Division, followed by a dash followed by another number to establish a specific number for the administrative functions of the Division. (e.g. 43-3231)

WATER RIGHTS ADDENDUM -- an addendum to a deed clarifying the water rights conveyed by the deed pursuant to Section 73-1-10(1)(d)(i) and 73-1-11(6). Addendums are recorded with the deed it accompanies at the County Recorder's Office and are forwarded by the County Recorder to the State Engineer pursuant to Utah Code Section 57-3-109.

R655-3-3. When a Water Rights Addendum Acts as a Report of Conveyance

3.1 When a recorded water right or land addendum and deed is transmitted to the State Engineer by a County Recorder, as required by Utah Code Section 57-3-109, the state engineer under Utah Code Section 73-1-10(1)(d)(ii) will consider the Water Rights Addendum to be a submitted Report of Water Right Conveyance.

3.2 Water Right Addendums submitted in conformance with this rule shall be processed by the state engineer and ownership updated on water right records of the Division if:

3.2.1 The grantor listed on the deed and addendum is the owner as listed on water right records of the Division; and

3.2.2 The Water Rights Addendum document is properly completed as instructed on the form.

3.3 If the state engineer does not update water right ownership on records of the Division upon submittal of a Water Rights Addendum as described in this rule, the state engineer shall provide written notice to the grantee at the address stated on the addendum of the reasons ownership was not updated.

3.4 If the state engineer does not update water right ownership on records of the Division upon submittal of a Water Right Addendum as described in this rule, a water right owner shall submit a report of water right conveyance as directed in Utah Code Section 73-1-10(3) and these rules.

3.5 An addendum is required to be signed by the grantors and grantees on the deed.

R655-3-4. Content of the Report of Conveyance.

4.1 A Report of Conveyance consists of:

4.1.1 A form provided by the state engineer which must be completed by the submitter;

4.1.2 Sufficient documentation presented as copies of properly recorded or authenticated documents to demonstrate the Chain of Title connecting the owner as shown on the Division's water right records to the person currently claiming ownership of all or a portion of the water right; and

4.1.3 Maps conforming to Rule R655-3-5 when conveyance by Appurtenance to land is asserted in the report of conveyance.

4.1.4 Additional information in the form of affidavits, opinions, and explanations if deemed necessary by the state engineer to process the ROC.

4.1.5 A fee paid to the State Engineer to process the Report of Conveyance pursuant to Utah Code Section 73-2-14(1)(q).

4.2 The content of a Report of Conveyance form is as follows:

4.2.1 A single specified water right number to which the report pertains. This is the water right ownership record of the Division which will be updated when the ROC is deemed acceptably complete.

4.2.2 A summary of the documents relied upon to establish a Chain of Title including:

4.2.2.1 The type of conveyance document;

4.2.2.2 Recording information on a deed including the date it was signed and recorded, and the Recorder's entry number;

4.2.2.3 The grantor name(s) as it appears on the conveyance document;

4.2.2.4 The grantee names exactly as they appear on the conveyance document;

4.2.2.5 Any reservations or special conditions of conveyance.

4.2.2.6 If a portion of a water right is conveyed, the "Portion" Report of Conveyance form must be used which additionally requires:

4.2.2.6.1 The quantity of each beneficial use conveyed.

4.2.2.6.2 If applicable, the quantity of use on a change application that was conveyed.

4.2.2.6.3 The diversion limit if applicable.

4.2.3 The number of any change application to which the report also pertains.

4.2.4 Name and mailing address of all new owner(s) as identified in the Chain of Title and as the name and mailing address is to be shown on records of the state engineer.

4.2.5 A signed certification of the owner if the ROC is submitted by an individual without a professional certification attesting that the information contained in the ROC is true and accurate.

4.2.6 A signed certification by a Professional unless submittal by a Professional is exempted in these rules. The certification shall state: The professional was retained by an owner of the water right to prepare or supervise the preparation of the Report of Conveyance; that the report is true and accurate to the best of the preparer's knowledge; that an adequate and competent search of the records of the appropriate County Recorder has been made to find all conveyances affecting ownership of the water right; and that the attached documents evidence the ownership interest of the grantee. The certification must include the professional's name, profession, license number, mailing address and phone number.

4.3 Copies of deeds submitted as supporting documentation must be properly recorded in the county where water is diverted and, if different, the county where the water is used. The recording information must appear on deeds submitted.

4.4 A water right deed conveys only the water right or portion thereof expressly identified in the deed.

4.5 A document relied upon by a County Recorder's office to maintain a tract index for land with an appurtenant water right will be accepted as a conveyance document consistent with Utah Code Section 73-1-11(1)(b). Documents submitted must include: a chain of title from the person identified on the State Engineer's records as owning the water right to the person shown on the County Recorder's records as owning the property to which the water right is appurtenant; a copy of the tract index from the County Recorder; and an affidavit endorsed by the Report of Conveyance professional affirming that the water right has not been severed from the land but remains appurtenant to the property.

4.6 If an interest in a water right has been segregated from another water right, a deed recorded subsequent to the segregation must show the currently assigned water right number for the segregated water right.

4.7 The document required to support the change of the name of a corporation is a certificate of name change stamped by the Utah Department of Commerce accompanying the Report of Conveyance.

4.8 A copy of a marriage license evidences the change of name of an individual specified in the license.

4.9 A copy of a decree of a court of competent jurisdiction evidences the change of name of an individual as declared in the decree.

4.10 A copy of a death certificate evidences the dissolution of joint tenancy in favor of the surviving party (removal of a joint tenant as an owner on Division records).

4.11 A properly executed affidavit by an individual evidences aliases by which the individual may be named in other documents.

4.12 All supporting documents must be legible.

4.13 Supporting documents must be arranged in ascending chronological order (oldest to youngest) by recording date.

R655-3-5. Maps and Mapping Standards for Reports of Conveyance.

5.1 Maps are required when a water right is conveyed as an appurtenance to property. A map is a graphical depiction of the water right place of use overlain by the metes and bounds description of the property conveyed in a land deed demonstrating graphically and to scale the portion of the water right which is appurtenant to the property described.

5.2 Maps shall meet the following standards:

5.2.1 Maps must be legible.

5.2.2 Maps may be 8 1/2 x 11 or 8 1/2 x 14 inches in size.

5.2.3 Maps are to state the water right number conveyed.

5.2.4 Maps are to include a north arrow.

5.2.5 Maps are to be drawn to scale with a graphical scale bar contained thereon.

5.2.6 Maps are to include appropriate Public Land Survey lines and labelled with section(s), township, range, and base and meridian.

5.2.7 At least one section corner location or appropriate survey tie is to be shown on the map and labelled as such.

5.2.8 Maps are to include and depict the entire parcel described as conveyed on the land deed and the actual acreage of the parcel.

5.2.9 Maps are to show by hatching or shading the authorized place of use of the water right which is appurtenant to land described in a land deed.

5.2.10 Maps are to show any reservations from the property including property described by language such as "less and excepting" in the overall property description.

5.2.11 Each deed submitted must have a map accompanying it unless the property description in every deed is identical.

5.2.12 Maps should include a legend containing an identifier for the deed mapped, parcel numbers, subdivision name and lot numbers, and any other information needed to connect the map to the deed in a clear and consistent manner.

5.3 The accuracy and completeness of maps are the responsibility of the professional preparing the Report of Conveyance. Additional information may be required by the Division of Water Rights to adequately identify the property to which water rights are appurtenant or the place of use of a portion of a water right being conveyed.

R655-3-6. Procedures for Processing a Report of Conveyance.

6.1 Upon receipt of a Report of Conveyance, the state engineer shall assess if the Report of Conveyance is acceptably completed in form and substance.

6.2 If a Report of Conveyance is acceptably complete, it will be processed and Division records updated to reflect ownership of the water right in accordance with the Report.

6.3 If a Report of Conveyance is not acceptably complete, the ROC will be returned to the submitting party with an explanation of why it is not considered acceptably complete.

6.4 If the fee for the ROC has been processed by the state engineer prior to the return of a ROC to the submitting party, the state engineer will place a copy of the ROC on the water right file but will not update ownership records until the ROC is acceptably complete. The submitting party will be allowed 90 days to return a corrected or completed ROC for processing without further fee.

6.5 The accuracy and completeness of the Report is the sole responsibility of the submitter.

6.6 A Report of Conveyance which conflicts with another Report on the same water right will not be processed and will be returned to the submitter. Its receipt will be noted on records of the state engineer and the disputing parties notified. When the parties agree as to the resolution of the conflict issue, either through negotiation by the parties or through a court action and attendant order, the state engineer will update accordingly.

R655-3-7. When a Water Right Owner Is Authorized to Prepare a Report of Conveyance Without a Professional.

7.1A Report of Conveyance may be submitted by the owner of a water right without the certification of a professional only in the following situations:

7.1.1 When the deed or deeds convey 100% of a water right and state the water right number on the deed.

7.1.2 When the deed or deeds convey a portion of a water right, all owners of the right sign the deed as grantors, the deed conveys the portion by stating the water right number on the deed, and the sole supply has been established for the portion conveyed.

7.1.3 When the Report of Conveyance is submitted to change the name of an owner but does not report the conveyance of an interest in the water right to a new party.

7.1.4 When the Report of Conveyance is submitted to remove the name of a joint tenant due to death.

KEY: water rights, conveyances, ownership, titles

Date of Enactment or Last Substantive Amendment: ~~July 1, 2000~~2016

Notice of Continuation: August 1, 2014

Authorizing, and Implemented or Interpreted Law: 73-1

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends May 2, 2016.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through July 30, 2016, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

**Environmental Quality, Waste
Management and Radiation Control,
Radiation
R313-22
Specific Licenses**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 39991

FILED: 03/10/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As an Agreement State with the U.S. Nuclear Regulatory Commission (NRC), Utah is required to have and maintain rules regarding radioactive materials that are compatible with the corresponding NRC radioactive materials regulations. The NRC reviewed the proposed changes for compatibility and provided a comment requesting a change to the originally proposed rule changes. The proposed rule change incorporates the NRC requested change and will result in the state rule being compatible with the corresponding NRC regulation.

SUMMARY OF THE RULE OR CHANGE: The proposed rule change incorporates the NRC requested change by deleting the phrase "to meet the criteria for license termination" from paragraph R313-22-35(5)(a)(i)(C). Removing this text will make the state rule compatible with the corresponding NRC regulation, as found in 10 CFR 70.25(e)(1)(C). (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the January 1, 2016, issue of the Utah State Bulletin, on page 33. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 USC 2021 and Section 19-3-104

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The minor correction requested by the U.S. Nuclear Regulatory Commission (NRC) in order to maintain regulatory compatibility with the NRC does not create any cost or savings impact to the state budget. The division will not incur any changes to radioactive materials licensing requirements or procedures due to the proposed change.

◆ **LOCAL GOVERNMENTS:** The minor correction requested by the U.S. NRC in order to maintain regulatory compatibility with the NRC does not create any cost or savings impact to local government.

◆ **SMALL BUSINESSES:** The minor correction requested by the U.S. NRC in order to maintain regulatory compatibility with the NRC does not create any cost or savings impact on small businesses. Even for businesses that may have a radioactive license, the nature of the proposed change does not have a fiscal impact.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The minor correction requested by the U.S. NRC in order to maintain regulatory compatibility with the NRC does not create any cost or savings impact to other entities not addressed by the preceding sections. Even for persons (businesses) that may have a radioactive license, the nature of the proposed change does not have a fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The minor correction requested by the U.S. NRC in order to maintain regulatory compatibility with the NRC does not create any compliance costs to radioactive materials licensees as a result of the proposed rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As a change that simply removes supplementary text that is not compatible with the corresponding NRC regulation, there is no fiscal, administrative, or operational impacts associated with the proposed rule change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2016

AUTHORIZED BY: Brad Johnson, Deputy Director

R313. Environmental Quality, Radiation Control.

R313-22. Specific Licenses.

R313-22-35. Financial Assurance and Recordkeeping for Decommissioning.

(1)(a) Applicants for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall also be submitted

when a combination of radionuclides is involved if R divided by 10^5 is greater than one, where R is defined here as the sum of the ratios of the quantity of each radionuclide to the applicable value in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference.

(b) Holders of, or applicants for, a specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, or when a combination of isotopes is involved if R , as defined in Subsection R313-22-35(1)(a), divided by 10^{12} is greater than one, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(c) Applicants for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(2) Applicants for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Subsection R313-22-35(4), or authorizing the possession and use of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either:

(a) submit a decommissioning funding plan as described in Subsection R313-22-35(5); or

(b) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Subsection R313-22-35(4) using one of the methods described in Subsection R313-22-35(6). Applicants for a specific license authorizing the possession and use of source material in a readily dispersible form shall submit a certification that financial assurance for decommissioning has been provided in the amount of \$225,000 by October 20, 2007. For an applicant subject to this subsection, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6) shall be submitted to the Director before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the Director, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements in Subsection R313-22-35(6).

(3)(a) Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1) or (2), shall provide financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(b) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(1), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in an amount at least equal to \$1,125,000 in accordance with the criteria set forth in Section R313-22-35. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(c) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(2), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(d) A licensee who has submitted an application before October 20, 2006, for renewal of license in accordance with Section R313-22-37, shall provide financial assurance for decommissioning in accordance with Subsections R313-22-35(1) and (2).

(e) Waste collectors and waste processors, as defined in Appendix G of 10 CFR 20.1001 to 20.2402, 2015, which is incorporated by reference, shall provide financial assurance in an amount based on a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall include the cost of disposal of the maximum amount (curies) of radioactive material permitted by the license, and the cost of disposal of the maximum quantity, by volume, of radioactive material which could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of Rule R313-15.

(f) If, in surveys made under R313-15-501(1), residual radioactivity in the facility and environment, including the subsurface, is detected at levels that would, if left uncorrected, prevent the site from meeting the R313-15-402 criteria for unrestricted use, the licensee shall submit a decommissioning funding plan within one year of when the survey is completed.

(g) Holders of a specific license issued prior to October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)(h), shall submit a decommissioning funding plan to the Director on or before October 20, 2007. Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)(h), shall submit a decommissioning funding plan to the Director as a part of the license application.

(h) Applicants for a specific license authorizing the possession and use of radioactive materials in sufficient quantities that require financial assurance and recordkeeping for decommissioning under Section R313-22-35 shall assure that all documents submitted to the Director for the purpose of demonstrating compliance with financial assurance and recordkeeping requirements meet the applicable criteria contained in the Nuclear Regulatory Commission's document NUREG-1757, Volume 3, "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness" (9/2003).

(i) Documents provided to the Director under Subsection R313-22-35(3)(h) shall provide that legal remedies be sought in a court of appropriate jurisdiction within Utah.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees required to submit an amount of financial assurance listed in this table must do so during a license application or as part of an amendment to an existing license. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

TABLE

<p>Greater than 10⁴ but less than or equal to 10⁵ times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10⁴ is greater than one but R divided by 10⁵ is less than or equal to one:</p>	<p>\$1,125,000</p>
<p>Greater than 10³ but less than or equal to 10⁴ times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10³ is greater than one but R divided by 10⁴ is less than or equal to one:</p>	<p>\$225,000</p>
<p>Greater than 10¹⁰ but less than or equal to 10¹² times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in sealed sources or plated foils. For combination of radionuclides, if R, as defined in R313-22-35(1)(a), divided by 10¹⁰ is greater than one, but R divided by 10¹² is less than or equal to one:</p>	<p>\$113,000</p>

(5)(a) Each decommissioning funding plan shall be submitted for review and approval and shall contain-

(i) A detailed cost estimate for decommissioning, in an amount reflecting:

(A) The cost of an independent contractor to perform all decommissioning activities;

(B) The cost of meeting the R313-15-402 criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of R313-15-403, the cost estimate may be based on meeting the R313-15-403 criteria;

(C) The volume of onsite subsurface material containing residual radioactivity that will require remediation[~~to meet the criteria for license termination~~]; and

(D) An adequate contingency factor.

(ii) Identification of and justification for using the key assumptions contained in the decommissioning cost estimate;

(iii) A description of the method of assuring funds for decommissioning from R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;

(iv) A certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and

(v) A signed original of the financial instrument obtained to satisfy the requirements of R313-22-35(6) (unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning).

(b) At the time of license renewal and at intervals not to exceed 3 years, the decommissioning funding plan ~~[must]~~shall be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this cannot be done until the updated decommissioning funding plan is approved. The decommissioning funding plan shall update the information submitted with the original or prior approved plan, and shall specifically consider the effect of the following events on decommissioning costs:

(i) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material;

(ii) Waste inventory increasing above the amount previously estimated;

(iii) Waste disposal costs increasing above the amount previously estimated;

(iv) Facility modifications;

(v) Changes in authorized possession limits;

(vi) Actual remediation costs that exceed the previous cost estimate;

(vii) Onsite disposal; and

(viii) Use of a settling pond.

(6) Financial assurance for decommissioning shall be provided by one or more of the following methods:

(a) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities;

(b) A surety method, insurance, or other guarantee method. These methods shall guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(8). A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of Section R313-22-35. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(9). A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of Section R313-22-35 or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. A surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

(i) the surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date the issuer notifies the Director, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Director within 30 days after receipt of notification of cancellation,

(ii) the surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be

acceptable to the Director. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency, and

(iii) the surety method or insurance shall remain in effect until the Director has terminated the license;

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in Subsection R313-22-35(6)(b);

(d) In the case of Federal, State or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in Subsection R313-22-35(4) and indicating that funds for decommissioning will be obtained when necessary; or

(e) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(7) Persons licensed under Rule R313-22 shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), licensees shall transfer all records described in Subsections R313-22-35(7)(a) through (d) to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Director considers important to decommissioning consists of the following:

(a) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(b) as-built drawings and modification of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(c) except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, including all of the following:

(i) all areas designated and formerly designated as restricted areas as defined under Section R313-12-3;

(ii) all areas outside of restricted areas that require documentation under Subsection R313-22-35(7)(a);

(iii) all areas outside of restricted areas where current and previous wastes have been buried as documented under Section R313-15-1109; and

(iv) all areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in Sections R313-15-401 through R313-15-406, or apply for approval for disposal under Section R313-15-1002; and

(d) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(8) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), the parent company shall meet one of the following criteria:

(i) The parent company shall have all of the following:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

(B) Net working capital and tangible net worth each at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used;

(C) Tangible net worth of at least \$10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used; or

(ii) The parent company shall have all of the following:

(A) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

(B) Tangible net worth at least six times the current decommissioning cost estimate, or prescribed amount if a certification is used;

(C) Tangible net worth of at least \$10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if certification is used.

(b) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform the Director within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(c)(i) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(ii) If the parent company no longer meets the requirements of Subsection R313-22-35(8)(a) the licensee shall send notice to the Director of intent to establish alternative financial assurance as specified in Section R313-22-35. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(d) The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(i) The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the Director, as evidenced by the return receipts.

(ii) If the licensee fails to provide alternate financial assurance as specified in Section R313-22-35 within 90 days after receipt by the licensee and Director of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(iii) The parent company guarantee and financial test provisions shall remain in effect until the Director has terminated the license.

(iv) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the Director. An acceptable trustee includes an appropriate State or Federal Government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(9) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), a company shall meet all of the following criteria:

(i) Tangible net worth at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(ii) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(iii) A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

(b) To pass the financial test, a company shall meet all of the following additional requirements:

(i) The company shall have at least one class of equity securities registered under the Securities Exchange Act of 1934;

(ii) The company's independent certified public accountant shall have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Director within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and

(iii) After the initial financial test, the company shall repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(c) If the licensee no longer meets the requirements of Subsection R313-22-35(9)(a), the licensee shall send immediate notice to the Director of its intent to establish alternate financial assurance as specified in Section R313-22-35 within 120 days of such notice.

(d) The terms of a self-guarantee which an applicant or licensee furnishes shall provide that:

(i) The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Director, as evidenced by the return receipt.

(ii) The licensee shall provide alternative financial assurance as specified in Section R313-22-35 within 90 days following receipt by the Director of a notice of a cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the Director has terminated the license or until another financial assurance method acceptable to the Director has been put in effect by the licensee.

(iv) The licensee shall promptly forward to the Director and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of such fact to the Director within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of Subsection R313-22-35(9)(a).

(vi) The applicant or licensee shall provide to the Director a written guarantee, a written commitment by a corporate officer, which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Director, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

KEY: specific licenses, decommissioning, broad scope, radioactive materials

Date of Enactment or Last Substantive Amendment: 2016

Notice of Continuation: September 23, 2011

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

**Governor, Economic Development
R357-7
Utah Capital Investment Board**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 40028

FILED: 03/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes are being made to incorporate public comments made to the original rule publication.

SUMMARY OF THE RULE OR CHANGE: Subsection R357-7-9(9) of the proposed rule permits the Board to review the economic development impact determined by an independent third party in accordance Subsection R357-7-9(5). As proposed, this review period would have run at the same time as the Board's review under Subsection R357-7-9(10) of economic development impact as reported to the Board in UCIC's annual report as required by Subsection 63N-6-301(6). Separating the timing of the Board's review of any independent third party's determination from its review of UCIC's annual report would allow review of such determination to be completed in advance of completion of the annual report. This separation of timing is consistent with the separation of the Board's review authority into Subsections R357-7-9(9) and (10). As proposed, Section R357-7-11 is the same as existing Section R357-7-11. Since the proposed rule affects changes to the other sections of Rule R357-7 to reflect the legislative changes to the VCEA under H.B. 411 (2015 General Session), the existing language of Section R357-7-11 is amended to operate consistently with the other sections of the rule. In general, the changes reflected in the comments to Section R357-7-11 do not have a substantive impact on this section's operation. The remainder of the changes are technical in nature to correct all cross-referencing in the rule to match with the incorporated changes. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed repeal and reenactment that was published in the January 15, 2016, issue of the Utah State Bulletin, on page 60. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63N-6-203 and Section 63N-6-401 and Section 63N-6-406 and Section 63N-6-408

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is the potential for some impact to state budget regarding this rule because it

determines how and in what amount certain tax credits would be given due to investments made by the Utah Capital Investment Corporation. The criteria in this rule will establish how these determinations are made and could impact the state budget.

◆ **LOCAL GOVERNMENTS:** There is no perceived impact to local governments because they cannot apply for or receive these tax credits.

◆ **SMALL BUSINESSES:** This rule does not impact small businesses because it determines a tax credit for investments based on economic impact as demonstrated by the Utah Capital Investment Corporation. The rule does not create any new requirements for businesses or any other potential cost creations.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule will not impact any other persons because it pertains solely to the economic impacts created by investments facilitated by the Utah Capital Investment Corporation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because this rule outlines how a tax credit is awarded and calculated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule may have some fiscal impact to the state budget in regards to the determination of tax credit eligibility and amount. Otherwise, there are no other costs associated with this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

GOVERNOR
ECONOMIC DEVELOPMENT
60 E SOUTH TEMPLE 3RD FLR
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jeffrey Van Hulten by phone at 801-538-8694, by FAX at 801-538-8888, or by Internet E-mail at jeffreyvan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/02/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2016

AUTHORIZED BY: Val Hale, Executive Director

**R357. Governor, Economic Development.
R357-7. Utah Capital Investment Board.
R357-7-1. Purpose.**

(1) The purpose of these rules is to establish criteria and procedures for the allocation and issuance of contingent tax credits by the Board.

R357-7-2. Authority.

(1) U.C.A. Sections 63N-6-203, 63N-6-401, 63N-6-406 and 63N-6-408 require the Board to:

(a) Make rules establishing the manner by which it allocates, issues, calculates, certifies and provides for the application for, transfer and redemption of, contingent tax credits;

(b) Establish criteria and procedures for assessing the likelihood of future certificate redemptions by designated investors; and

(c) Set a target rate of return or range of returns for the investment portfolio of the Utah Fund of Funds.

R357-7-3. Definitions.

(1) "Accredited Investor" has the same meaning as under the U.S. Securities Act of 1933, as amended, including the rules promulgated thereunder.

(2) "Act" means the Utah Venture Capital Enhancement Act, U.C.A. Section 63N-6-101 et seq.

(3) "Actual Return" means the actual aggregate amount of cash or cash equivalents and the fair market value of property received from a Utah Fund of Funds with respect to a Private Investment, including amounts received as returns of contributed capital or returns on capital contributions and amounts received in excess of capital contributed, in whatever form received.

(4) "Annual Report" means the annual report of the activities conducted by the Utah Fund of Funds that is published by the Corporation, in consultation with the Board in accordance with U.C.A. Section 63N-6-301(6).

(5) "Auditor" means the Person that conducts the annual audit made in accordance with U.C.A. Section 63N-6-405.

(6) "Board" means the Utah Capital Investment Board, established in accordance with U.C.A. Section 63N-6-201.

(7) "Business Day" means any day other than a Saturday, Sunday, or a day on which banking institutions located in Salt Lake City, Utah are authorized by law to be closed.

(8) "Calendar Year" means, with respect to any date or event, the actual calendar year in which such date or event occurs.

(9) "Capital Invested" means the actual aggregate amount of cash or cash equivalents and the fair market value of property contributed with respect to a Private Investment in a Utah Fund of Funds, including capital contributions made by and distributions returned to such Utah Fund of Funds in accordance with the terms of the limited partnership agreement or operating agreement of the Utah Fund of Funds.

(10) "Certificate" means a "certificate" within the meaning of U.C.A. Section 63N-6-103(2).

(11) "Certificate of Eligibility" means a certificate issued in accordance with section 3 of ~~rule 7-6~~ R357-7-6 to a Designated Investor.

(12) "Certificate Register" means the register maintained by the Board recording the name, address and taxpayer identification number of each Designated Investor and all transactions involving Certificates, Certificates of Eligibility, Tax Credit Redemption Certificates and Tax Credit Balance Certificates, including the maximum amount of tax credits represented by each certificate issued or Transferred to such Designated Investor.

(13) "Certification" means (i) with respect to a Certificate for contingent tax credits, the process by which the Board certifies the amount of tax credits the Designated Investor is entitled to

receive in accordance with ~~rule 7-4~~ R357-7-4 or ~~rule 7-5~~ R357-7-5 as applicable, and (ii) with respect to a Certificate of Eligibility or Tax Credit Balance Certificate, the process by which the Board certifies the amount of tax credits a Designated Investor is entitled to receive upon application in accordance with ~~rule 7-6~~ R357-7-6.

(14) "Commission" means the Utah State Tax Commission.

(15) "Corporation" means Utah Capital Investment Corporation, established in accordance with U.C.A. Section 63N-6-301.

(16) "Closing" means the date of acceptance of a Designated Investor's capital commitment and admission of such Designated Investor as a limited partner or member, as applicable, in a Utah Fund of Funds.

(17) "Debt-based Refinancing" means a Private Investment structured as a loan to a Utah Fund of Funds that is used to repay all or a portion of the outstanding principal, premium or interest of an existing loan to such Utah Fund of Funds that was originated before July 1, 2014 or the modification of the terms of such an existing loan in accordance with U.C.A. Section 63N-6-406(2)(e).

(18) "Designated Investor" means (a) a Person who makes a Private Investment to whom a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate is issued, and (b) such Person's successor as a matter of law. A Transferee of a Designated Investor shall succeed to the rights of a Designated Investor with respect to a Certificate, Certification of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate to the extent such rights are Transferred in accordance with ~~rule 7-7~~ R357-7-7 and upon such Transfer shall be a Designated Investor for purposes of these rules.

(19) "Designated Purchaser" means a "designated purchaser" within the meaning of U.C.A. Section 63N-6-103(8).

(20) "Determination Date" means, with respect to each Utah Fund of Funds, December 31 of the Calendar Year in which the Term of such Utah Fund of Funds expires.

(21) "Economic Development Impact" means the dollar amount determined by the Board in accordance with ~~rule 7-9~~ R357-7-9.

(22) "Equity-based Refinancing" means a Private Investment structured as equity in a Utah Fund of Funds that is used to repay all or a portion of the outstanding principal, premium or interest of an existing loan made to such Utah Fund of Funds that was originated before July 1, 2014 in accordance with U.C.A. Section 63N-6-406(2)(e).

(23) "Feeder Fund" means a Designated Investor that is an investment fund, the principal purpose of which is to make a Private Investment in a Utah Fund of Funds and for which the Corporation serves as manager, general partner, or investment manager at the time of such Private Investment. A Feeder Fund may be organized in a jurisdiction other than the state of Utah.

(24) "Fiscal Year" means the fiscal year as established in U.C.A. Section 51-7-3.5.

(25) "Maturity Date" means the date specified in a Certificate, representing the earliest date such Certificate may be presented to the Board for Certification.

(26) "Person" means an individual, partnership, limited liability company, corporation, association, organization, business trust, estate, trust or any other legal or commercial entity.

(27) "Private Investment" means a "private investment" within the meaning of U.C.A. Section 63N-6-103(11).

(28) "Redemption" means the presentation of a certified tax credit to the Commission for payment in accordance with U.C.A. Section 63N-6-408.

(29) "Redemption Reserve" means the "redemption reserve" within the meaning of U.C.A. Section 63N-6-103(12).

(30) "Scheduled Return" means the scheduled return, whether in cash, cash equivalents or other property (including returns of and returns on investment), with respect to a Private Investment as set forth in a Certificate for the period from the date of the Closing for such Private Investment to the applicable Maturity Date.

(31) "Shortfall" means the amount, if any, equal to the amount by which the Capital Invested with respect to a Private Investment in a Utah Fund of Funds exceeds the Actual Return received with respect to such Private Investment.

(32) "Target Rate of Return" means the target rate of return established by the Board in accordance with ~~[rule 7-9]~~R357-7-10.

(33) "Tax Credit Balance Certificate" means a certificate issued in accordance with sections ~~[7]8~~ or ~~[+0]11~~ of ~~[rule 7-6]~~R357-7-6.

(34) "Tax Credit Eligibility" means the amount of tax credits a Designated Investor is entitled to apply for in accordance with sections 6 and 7 of ~~[rule 7-6]~~R357-7-6.

(35) "Tax Credit Redemption Certificate" means a certificate issued by the Board representing a tax credit that may be claimed by a Designated Investor in accordance with U.C.A. Section 63N-6-408(4).

(36) "Term" means the period of the term of a Utah Fund of Funds prior to the commencement of its dissolution and winding up, as specified in the applicable Utah Fund of Funds operating agreement or limited partnership agreement, including any early termination or extension of such term.

(37) "Transfer" means the transfer, assignment or encumbrance of a Designated Investor's interest in a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, made in accordance with ~~[rule 7-7]~~R357-7-7.

(38) "Transferee" means the Person to whom a Designated Investor Transfers its interest in a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, in accordance with ~~[rule 7-7]~~R357-7-7.

(39) "Transferor" means the Designated Investor that is Transferring its interest in a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, in accordance with ~~[rule 7-7]~~R357-7-7.

(40) "Utah-based Investment Fund" means a private investment fund, whose principal office is maintained in the state of Utah.

(41) "Utah-based Operating Company" means an operating company, the principal executive office of which is located in the state of Utah, or that employs more than 50% of its employees in the state of Utah.

(42) "Utah Fund of Funds" means any limited partnership or limited liability company established in accordance with U.C.A. Section 63N-6-401 in which a Designated Investor makes a Private Investment. There may be more than one Utah Fund of Funds.

R357-7-4. Procedure for the Issuance, Certification and Redemption of Tax Credits for Debt-based Refinancing Transactions.

This ~~[rule 7-4]~~R357-7-4 applies to the Debt-based Refinancing of existing loans to a Utah Fund of Funds that were entered into prior to July 1, 2014 even if the refinancing occurs after July 1, 2015.

(1) No later than 20 Business Days prior to each Closing of a Debt-based Refinancing, the Corporation shall provide the following information to the Board:

(a) A summary of the terms of the loan instrument(s) and other contractual agreements to be entered into by the Utah Fund of Funds or the Corporation in connection with the Debt-based Refinancing; and

(b) The anticipated Closing date.

(2) No later than two Business Days prior to each Closing of a Debt-based Refinancing, the Corporation shall provide the following information to the Board for each Person expected to become a Designated Investor at Closing:

(a) Name of the Designated Investor;

(b) Evidence that the Designated Investor is an Accredited Investor;

(c) The Designated Investor's address and taxpayer identification number;

(d) The aggregate principal amount of loans expected to be made at such Closing by such Designated Investor;

(e) The method of determining the scheduled principal and interest payments applicable to such Debt-based Refinancing;

(f) The Scheduled Return for the Designated Investor applicable to such Debt-based Refinancing.

(g) The maximum amount of contingent tax credits to be certified for each Certificate to be issued at Closing;

(h) The Maturity Date or Maturity Dates for each Certificate to be issued at Closing; and

(i) All of the requested contingencies to be applicable to the contingent tax credits to which such Certificate relates.

(3) Upon receipt of the information identified in sections 1 and 2 of this ~~[rule 7-4]~~R357-7-4, the Board shall issue a Certificate for contingent tax credits in accordance with U.C.A. Section 63N-6-406, to each Designated Investor identified at Closing with respect to such Designated Investor's Private Investment to be made at Closing. The following provisions shall apply to such Certificates:

(a) Certificates may only be issued by the Board;

(b) Certificates shall be based on the principal amount invested in the applicable Utah Fund of Funds plus scheduled interest.

(c) The maximum amount of contingent tax credits represented by each Certificate shall be calculated in accordance with the limitations set forth in U.C.A. Section 63N-6-406(2)(a);

(d) The maximum amount of outstanding Certificates that may be redeemed in a Fiscal Year will be calculated on a proportional basis in the proportions set forth in U.C.A. Section 63N-6-406(2)(c).

(e) The maximum amount of tax credits to be certified for a Private Investment may not exceed the difference between (i) the Scheduled Return for such Private Investment and (ii) the Actual Return received with respect to such Private Investment, determined as of the applicable Maturity Date.

(4) Each Certificate issued to a Designated Investor in connection with a Debt-based Refinancing shall contain, or incorporate by reference to another document, each of the following:

(a) The name, address and taxpayer identification number of the Designated Investor to which such Certificate relates;

(b) The amount of the Designated Investor's maximum principal loan amount and interest rate;

(c) All contingencies applicable to the tax credits to which such Certificate relates;

(d) The date of issuance of such Certificate;

(e) The Maturity Date or Maturity Dates of such Certificate;

(f) The maximum amount of contingent tax credits represented by such Certificate;

(g) The process for presenting the Certificate for Certification and Redemption; and

(h) Such other provisions the Board determines to be include that are consistent with the Act and these rules.

(5) Certification of Contingent Tax Credits:

(a) To redeem a Certificate for tax credits, a Designated Investor shall present the Board with its Certificate for Certification no later than June 30 of the Calendar Year in which the earliest Maturity Date stated on the Certificate occurs.

(b) Prior to Certification, the Board will determine the amount of funds available in the Redemption Reserve.

(i) If funds are available in the Redemption Reserve, the Board shall direct the Corporation to make a cash payment with respect to such Certificate in accordance with U.C.A. Section 63N-6-408 to the extent funds are available therefor and tax credits are eligible for Certification under such Certificate, such payment to be allocated among Designated Investors in proportion to the outstanding balances of all Certificates, Certificates of Eligibility and Tax Credit Balance Certificates timely presented to the Board pending Certification.

(ii) Any such payments referenced in paragraph (i) shall reduce, dollar for dollar, the amount of tax credits that may be certified by the Board with respect to such Certificates.

(c) Prior to Certification, the Board, at its election, may make a demand upon a Designated Purchaser to purchase the tax credits represented by the Certificate in accordance with U.C.A. Section 63N-6-409.

(d) The Corporation shall provide all information and documents reasonably available to it that the Board requests and determines are necessary for the Board to be able to certify the amount of tax credits to be claimed by the Designated Investor. Such information and documents shall include but are not limited to the following:

(i) Contractual agreements to which either any of the Corporation, the Designated Investor or any applicable Utah Fund of Funds is a party that were entered into in connection with the Debt-based Refinancing.

(ii) All documents and financial information necessary to calculate the actual amounts paid by the Utah Fund of Funds to the Designated Investor with respect to its Private Investment in the Utah Fund of Funds.

(iii) Any other documents the Board deems necessary to assess compliance with this chapter or to verify the amount of certifiable tax credits related to a Certificate.

(e) No later than the date that is the later of (i) September 1 of the Calendar Year in which the earliest Maturity Date stated on the Certificate occurs or (ii) the date that is 20 Business Days after receipt of all information and documents pursuant to section 5(d) of this ~~[rule 7.4]R357-7-4~~ the Board shall establish and certify to the Designated Investor the amount of tax credits related to the Certificate, if any.

(f) The Board shall provide the Designated Investor a Tax Credit Redemption Certificate setting forth the amount of certified tax credits represented by such Certificate (if any) that may be claimed by the Designated Investor, in accordance with U.C.A. Section 63N-6-408 and ~~[rule 7.11]R357-7-11~~.

(g) If the certified Certificate has more than one Maturity Date, the Board shall issue to the Designated Investor a Tax Credit Redemption Certificate for the certified tax credits for the applicable Maturity Date in accordance with section 5(f) of this ~~[rule 7.4]R357-7-4~~ and shall issue to the Designated Investor one or more Certificates for the balance of any contingent tax credits applicable to future Maturity Dates for which the tax credits are not then being certified.

(h) Certificates being certified for a Maturity Date shall be certified pro rata with all other Certificates being certified for the same Maturity Date.

(i) If a Certificate for contingent tax credits has more than one Maturity Date, the Maturity Date or Maturity Dates occurring in the same Calendar Year on which the Certificate was presented to the Board for certification shall be the Maturity Date or Maturity Dates used for purposes of Certification under this ~~[rule 7.4]R357-7-4~~.

(j) Once a Tax Credit Redemption Certificate has been issued, the Board shall notify the Commission of such issuance within five Business Days.

(k) Upon Certification of a Certificate, the Board shall cancel such Certificate, unless such Certificate has a Maturity Date that has not expired, in which case the Board shall issue a balance Certificate in accordance with section 5(g) of this ~~[rule 7.4]R357-7-4~~.

(6) Expiration or Cancellation of Tax Credits Represented by Certificates. Tax credits represented by a Certificate shall expire or be cancelled as provided in the Certificate.

(7) The agreements between a Utah Fund of Funds and a Designated Investor regarding a Private Investment shall provide that upon timely presentation of the Certificate applicable to such Private Investment to the Board for Certification in accordance with this ~~[rule 7.4]R357-7-4~~ by such Designated Investor or its Transferee, such Designated Investor shall be deemed to have assigned to the Corporation effective as of the Maturity Date all of the indebtedness owed to such Designated Investor by the applicable Utah Fund of Funds. Any payments made by such Utah Fund of Funds to such Designated Investor after the Maturity Date with respect to such assigned indebtedness shall reduce the amount of tax credits represented by the Tax Redemption Certificate to be issued to such Designated Investor. Any amounts received by the Corporation with respect to such assigned indebtedness shall be paid first to the state of Utah in an amount up to the amount of tax credits granted by the state of Utah to such Designated Investor and the balance shall be retained by the Corporation to be included in the Redemption Reserve.

R357-7-5. Procedure for the Issuance, Certification and Redemption of Tax Credits for Equity-based Refinancing Transactions.

This ~~[rule 7-5]~~R357-7-5 applies to the Equity-based Refinancing of existing loans to Utah Fund of Funds that were entered into prior to July 1, 2014 even if the refinancing occurs after July 1, 2015.

(1) No later than 20 Business Days prior to each Closing of an Equity-based Refinancing, the Corporation shall provide the following information to the Board:

(a) A summary of the terms of the limited partnership agreement or the operating agreement of the issuing Utah Fund of Funds and other contractual agreements to be entered into by the Utah Fund of Funds or the Corporation in connection with the Equity-based Refinancing; and

(b) The anticipated Closing date.

(2) No later than two Business Days prior to each Closing of an Equity-based Refinancing, the Corporation shall provide the following information to the Board for each Person expected to become a Designated Investor at Closing:

(a) Name of the Designated Investor;

(b) Evidence that the Designated Investor is an Accredited Investor;

(c) The Designated Investor's address and taxpayer identification number;

(d) The aggregate amount of the capital commitment expected to be made at such Closing by such Designated Investor;

(e) The maximum amount of contingent tax credits to be certified for each Certificate to be issued at Closing;

(f) The Maturity Date or Maturity Dates for each Certificate to be issued at Closing; and

(g) All of the requested contingencies to be applicable to the contingent tax credits to which such Certificate relates.

(3) Upon receipt of the information identified in sections 1 and 2 of this ~~[rule 7-5]~~R357-7-5, the Board shall issue a Certificate for contingent tax credits in accordance with U.C.A. Section 63N-6-406, to each Designated Investor identified at Closing with respect to such Designated Investor's Private Investment to be made at Closing. The following provisions shall apply to such Certificates:

(a) Certificates may only be issued by the Board;

(b) Certificates shall be based on the Capital Invested in the applicable Utah Fund of Funds.

(c) The maximum amount of contingent tax credits represented by each Certificate shall be calculated in accordance with the limitations set forth in U.C.A. Section 63N-6-406(2)(a);

(d) The maximum amount of outstanding Certificates that can be redeemed in a Fiscal Year will be calculated on a proportional basis in the proportions set forth in U.C.A. Section 63N-6-406(2)(c).

(e) The maximum amount of tax credits to be certified for a Designated Investor may not exceed any Shortfall attributable to such Designated Investor's Private Investment, determined as of the applicable Maturity Date.

(4) Each Certificate issued to a Designated Investor in connection with an Equity-based Refinancing shall contain, or incorporate by reference to another document, each of the following:

(a) The name, address and taxpayer identification number of the Designated Investor to which such Certificate relates;

(b) The amount of the Designated Investor's maximum investment commitment;

(c) All contingencies applicable to the tax credits to which such Certificate relates;

(d) The date of issuance of such Certificate;

(e) The Maturity Date or Maturity Dates of such Certificate;

(f) The maximum amount of the contingent tax credits represented by such Certificate;

(g) The process for presenting the Certificate for Certification and Redemption; and

(h) Such other provisions the Board determines to include that are consistent with the Act and these rules.

(5) Certification of Contingent Tax Credits:

(a) To redeem a Certificate for tax credits, a Designated Investor shall present the Board with its Certificate for Certification no later than June 30 of the Calendar Year in which the earliest Maturity Date stated on the Certificate occurs.

(b) Prior to Certification, the Board will determine the amount of funds available in the Redemption Reserve.

(i) If funds are available in the Redemption Reserve, the Board shall direct the Corporation to make a cash payment with respect to such Certificate in accordance with U.C.A. Section 63N-6-408 to the extent funds are available therefor and tax credits are eligible for certification under such Certificate, such payment to be allocated among Designated Investors in proportion to the outstanding balances of all Certificates, Certificates of Eligibility and Tax Credit Balance Certificates timely presented to the Board pending Certification.

(ii) Any such payments referenced in paragraph (i) shall reduce, dollar for dollar, the amount of tax credits that may be certified by the Board with respect to such Certificates.

(c) Prior to Certification, the Board, at its election, may make a demand upon a Designated Purchaser to purchase the tax credits represented by the Certificate in accordance with U.C.A. Section 63N-6-409.

(d) The Corporation shall provide all information and documents reasonably available to it that the Board requests and determines are necessary for the Board to be able to certify the amount of tax credits to be claimed by the Designated Investor. Such information and documents include but are not limited to the following:

(i) Contractual agreements to which any of the Corporation, the Designated Investor or any applicable Utah Fund of Funds is a party that were entered into in connection with the Equity-based Refinancing.

(ii) All documents and financial information necessary to calculate the actual amounts paid by the Utah Fund of Funds to the Designated Investor with respect to its Private Investment in the Utah Fund of Funds.

(iii) Any other documents the Board deems necessary to assess compliance with this chapter or to verify the amount of certifiable tax credits related to a Certificate.

(e) No later than the date that is the later of (i) September 1 of the Calendar Year in which the earliest Maturity Date stated on the Certificate occurs or (ii) the date that is 20 Business Days after receipt of all information and documents pursuant to section 5(d) of

this ~~rule 7.5~~R357-7-5 the Board shall establish and certify to the Designated Investor the amount of tax credits related to the Certificate, if any.

(f) The Board shall provide the Designated Investor a Tax Credit Redemption Certificate setting forth the amount of certified tax credits represented by such Certificate (if any) that may be claimed by the Designated Investor, in accordance with U.C.A. Section 63N-6-408 and ~~rule 7.11~~R357-7-11.

(g) If the certified Certificate has more than one Maturity Date, the Board shall issue to the Designated Investor a Tax Credit Redemption Certificate for the certified tax credits for the applicable Maturity Date in accordance with section 5(f) of this ~~rule 7.5~~R357-7-5 and shall issue to the Designated Investor one or more Certificates for the balance of any contingent tax credits applicable to future Maturity Dates for which the tax credits are not then being certified.

(h) Certificates being certified for a Maturity Date shall be certified pro rata with all other Certificates being certified for the same Maturity Date.

(i) If a Certificate for contingent tax credits has more than one Maturity Date, the Maturity Date or Maturity Dates occurring in the same Calendar Year on which the Certificate was presented to the Board for certification shall be the Maturity Date or Maturity Dates used for purposes of Certification under this ~~rule 7.5~~R357-7-5.

(j) Once a Tax Credit Redemption Certificate has been issued, the Board will notify the Commission of such issuance within five Business Days.

(k) Upon Certification of a Certificate, the Board shall cancel such Certificate, unless such Certificate has a Maturity Date that has not expired, in which case the Board shall issue a balance Certificate in accordance with section 5(g) of this ~~rule 7.5~~R357-7-5.

(6) Expiration or Cancellation of Tax Credits Represented by Certificates. Tax credits represented by a Certificate shall expire or be cancelled as provided in the Certificate.

(7) The agreements between a Utah Fund of Funds and a Designated Investor regarding a Private Investment shall provide that upon timely presentation of the Certificate applicable to such Private Investment to the Board for Certification in accordance with this ~~rule 7.5~~R357-7-5 by such Designated Investor or its Transferee, such Designated Investor shall be deemed to have assigned to the Corporation effective as of the Maturity Date all of such Designated Investor's Private Investment in the applicable Utah Fund of Funds. Such assignment shall include, without limitation, any and all rights to future distributions, dividends, redemption proceeds or other payments from such Utah Fund of Funds attributable to such Private Investment. Any payments made by such Utah Fund of Funds to such Designated Investor after the Maturity Date with respect to such assigned interest shall reduce the amount of tax credits represented by the Tax Redemption Certificate to be issued to such Designated Investor. Any amounts received by the Corporation with respect to such assigned interest shall be paid first to the state of Utah in an amount up to the amount of certified tax credits granted by the state of Utah to such Designated Investor and the balance shall be retained by the Corporation to be included in the Redemption Reserve.

R357-7-6. Procedure for the Application, Issuance, Certification and Redemption of Economic Development Incentive-based Tax Credits for Equity-based Investments in a Utah Fund of Funds.

This ~~rule 7.6~~R357-7-6 applies to Private Investments structured as equity investments in any Utah Fund of Funds initiated on or after July 1, 2015, excluding any Equity-based Refinancing.

(1) No later than 20 Business Days prior to each Closing to which this ~~rule 7.6~~R357-7-6 applies, the Corporation shall provide the following information to the Board:

(a) A summary of the terms of the limited partnership agreement or the operating agreement of the applicable Utah Fund of Funds and any other contractual agreements to be entered into by the applicable Utah Fund of Funds, the Corporation and any Designated Investor in connection with its Private Investment in a Utah Fund of Funds; and

(b) The anticipated Closing date.

(2) No later than two Business Days prior to each Closing, the Corporation shall provide the Board with the following information with respect to each Person expected to become a Designated Investor at such Closing:

(a) Name of the Designated Investor;

(b) Evidence that the Designated Investor is an Accredited Investor;

(c) The Designated Investor's address and taxpayer identification number;

(d) The aggregate amount of the capital commitment expected to be made at such Closing by the Designated Investor; and

(e) The Term of the applicable Utah Fund of Funds.

(3) Within 20 Business Days after each Closing, the Board shall issue to each Designated Investor that has invested in the applicable Utah Fund of Funds at such Closing a Certificate of Eligibility.

(a) The maximum aggregate amount of tax credits for which a Designated Investor may apply as represented by its Certificate of Eligibility shall be calculated in accordance with the limitations set forth in U.C.A. Section 63N-6-406(2)(a).

(b) A Certificate of Eligibility shall entitle a Designated Investor to apply for a Tax Credit Redemption Certificate in accordance with this ~~rule 7.6~~R357-7-6 as in effect at the time such Certificate of Eligibility was certified by the Board and may not be modified, terminated or rescinded without the consent of such Designated Investor.

(4) Each Certificate of Eligibility shall contain, or incorporate by reference to another document, each of the following:

(a) The name, address and taxpayer identification number of the Designated Investor to whom the Certificate of Eligibility is issued;

(b) The maximum amount of tax credits represented by such Certificate of Eligibility for which such Designated Investor is eligible to apply (which shall be equal to such Designated Investor's capital commitment to the applicable Utah Fund of Funds);

(c) The date of issuance of the Certificate of Eligibility; and

(d) A statement that such Designated Investor is eligible to apply for tax credits represented by a Tax Credit Redemption Certificate, subject to the limitations set forth in this ~~[rule 7-6]~~R357-7-6.

(5) Application for Tax Credits or other Payments.

([e]a) A Designated Investor who has received a Certificate of Eligibility may apply to the Board for tax credits represented by a Tax Credit Redemption Certificate if the following conditions are satisfied:

(i) Subject to section 5(c) of this ~~[rule 7-6]~~R357-7-6, such Designated Investor has contributed capital to the applicable Utah Fund of Funds in the amount required under the agreement between such Utah Fund of Funds and the Designated Investor;

(ii) The Term of the applicable Utah Fund of Funds has expired.

(iii) As of the Determination Date, there is a Shortfall attributable to such Designated Investor's Private Investment.

(iv) There is Economic Development Impact attributable to the applicable Utah Fund of Funds as most recently certified by the Board in accordance with ~~[rule 7-9]~~R357-7-9 and section 12 of this ~~[rule 7-6]~~R357-7-6 prior to the Determination Date.

(v) As of the Determination Date, there are insufficient funds in the Redemption Reserve available to make a cash payment equal to the amount of the lesser of (i) the Shortfall described in section 5(a)(iii) of this ~~[rule 7-6]~~R357-7-6 for all Designated Investors of the applicable Utah Fund of Funds, and (ii) the amount of Economic Development Impact described in section 5(a)(iv) of this ~~[rule 7-6]~~R357-7-6 attributable to such Designated Investors.

([f]b) Any Designated Investor not eligible to apply for tax credits as a result of the condition set forth in section 5(a)(v) of this ~~[rule 7-6]~~R357-7-6, may present its Certificate of Eligibility to the Board no later than the June 30 following the Determination Date, and to the extent such Certificate of Eligibility would otherwise be certified in accordance with this ~~[rule 7-6]~~R357-7-6 absent such condition, the Board shall direct the Corporation to make a cash payment from the Redemption Reserve or other sources with respect to such Designated Investors in accordance with U.C.A. Section 63N-6-408 to the extent funds are available therefor by no later than September 1 of the Calendar Year immediately following the Determination Date, such payment to be allocated among Designated Investors in proportion to the outstanding balances of all Certificates, Certificates of Eligibility and Tax Credit Balance Certificates timely presented to the Board pending Certification.

([g]c) If a Feeder Fund fails to contribute capital to a Utah Fund of Funds with respect to which such Feeder Fund is a Designated Investor in the amount required under the agreement between such Utah Fund of Funds and such Feeder Fund, and such failure is a direct result of the failure of any member, partner or other equity investor of such Feeder Fund (a "Feeder Fund Investor") to make a contribution of capital required to be made to such Feeder Fund, then the restriction on applying for tax credits set forth in section 5(a)(i) of this ~~[rule 7-6]~~R357-7-6 shall apply only to (i) that portion of the tax credits represented by the Certificate of Eligibility issued to such Feeder Fund that bears the same proportion to the aggregate tax credits represented by such Certificate of Eligibility, as the obligation to contribute capital to

such Feeder Fund of such Feeder Fund Investor bears to the aggregate obligations to contribute capital to such Feeder Fund of all its Feeder Fund Investors or (ii) any Certificate of Eligibility Transferred to such Feeder Fund Investor by such Feeder Fund.

([5]6) Upon the satisfaction of the conditions set forth in section 5(a) of this ~~[rule 7-6]~~R357-7-6, a Designated Investor may apply for a Tax Credit Redemption Certificate, in a form prescribed by the Board in accordance with this ~~[rule 7-6]~~R357-7-6. The Tax Credit Redemption Certificate shall be issued in an amount equal to the lesser of (i) the Economic Development Impact attributable to such Designated Investor determined in accordance with ~~[rule 7-9]~~R357-7-9 and section 12 of this ~~[rule 7-6]~~R357-7-6 and (ii) the Shortfall attributable to such Designated Investor's Private Investment, in each case calculated as of the Determination Date.

([6]7) To apply for tax credits, a Designated Investor shall present the Board with its Certificate of Eligibility no later than the first June 30 following the Determination Date. If for any reason a Designated Investor fails to present its Certificate of Eligibility to the Board on time, such Certificate of Eligibility shall automatically expire without further action of the Board and any eligibility to apply for tax credits represented thereby shall be forfeited.

(a) The amount of tax credits represented by a Certificate of Eligibility that the Board is permitted to certify in a Fiscal Year upon application by a Designated Investor will be calculated and allocated in accordance with section [42]13 of this ~~[rule 7-6]~~R357-7-6.

(b) The Corporation shall provide all information and documents reasonably available to it that the Board requests and determines are necessary for the Board to be able to certify the amount of tax credits to be claimed by the Designated Investor. Such information and documents include but are not limited to the following:

(i) Contractual agreements to which either the Corporation or any applicable Utah Fund of Funds is a party that were entered into in connection with the Designated Investor's Private Investment in the applicable Utah Fund of Funds.

(ii) All financial information and related documents necessary to calculate the Shortfall attributable to such Designated Investor's Private Investment.

(iii) Any other documents the Board deems necessary to assess compliance with this chapter or to verify the amount of certifiable tax credits related to such Certificate of Eligibility.

(c) Prior to Certification, the Board will determine the amount of funds available in the Redemption Reserve.

(i) If funds are available in the Redemption Reserve, the Board shall direct the Corporation to make a cash payment with respect to such Certificate of Eligibility in accordance with U.C.A. Section 63N-6-408 to the extent funds are available therefor and tax credits are eligible for certification under such Certificate of Eligibility, such payment to be allocated among Designated Investors in proportion to the outstanding balances of all Certificates, Certificates of Eligibility and Tax Credit Balance Certificates timely presented to the Board pending Certification.

(ii) Any such payments referenced in paragraph (i) shall reduce, dollar for dollar, the amount of tax credits that may be certified by the Board with respect to such Certificates of Eligibility and Tax Credit Balance Certificates.

(d) Prior to Certification, the Board, at its election, may make a demand upon a Designated Purchaser to purchase the tax credits represented by the Certificate of Eligibility in accordance with U.C.A. Section 63N-6-409.

(e) No later than the date that is the later of (i) September 1 of the Calendar Year immediately following the Determination Date or (ii) the date that is 20 Business Days after receipt of all information and documents pursuant to section 7(~~rule 7-6~~)b of this ~~rule 7-6~~R357-7-6, the Board shall establish and certify to the Designated Investor the amount of tax credits related to the Certificate of Eligibility, if any.

(f) The Board shall Issue each Designated Investor a Tax Credit Redemption Certificate setting forth the amount of certified tax credits represented by such certificate (if any) that may be claimed by such Designated Investor, in accordance with U.C.A. Section 63N-6-408 and ~~rule 7-11~~R357-7-11.

(g) Once a Tax Credit Redemption Certificate has been issued, the Board will notify the Commission of such issuance within five Business Days.

(h) Upon issuance of a Tax Credit Redemption Certificate, the Board shall cancel the related Certificate of Eligibility.

(~~7~~8) To the extent that, in accordance with section 7(a) of this ~~rule 7-6~~R357-7-6, the Board is not permitted to certify all of the tax credits represented by a Designated Investor's Certificate of Eligibility, upon cancellation of the Certificate of Eligibility in accordance with section 7(h) of this ~~rule 7-6~~R357-7-6, the Board shall issue to such Designated Investor a Tax Credit Balance Certificate for the amount of remaining tax credits that were limited by section 7(a) of this ~~rule 7-6~~R357-7-6. The amount of tax credits for which a Designated Investor is eligible to apply represented by its Tax Credit Balance Certificate shall not be adjusted for any Economic Development Impact measurements made in accordance with ~~rule 7-9~~R357-7-9 for any period after the applicable Determination Date.

(~~8~~9) A Tax Credit Redemption Certificate issued to a Designated Investor shall contain each of the following:

(a) The name, address and taxpayer identification number of such Designated Investor;

(b) The date of issuance of the Tax Credit Redemption Certificate; and

(c) The amount of tax credits to be claimed.

(~~9~~10) A Tax Credit Balance Certificate issued to a Designated Investor shall contain each of the following:

(a) The name, address and taxpayer identification number of such Designated Investor;

(b) The date of issuance of the Tax Credit Balance Certificate;

(c) The certificate number of the cancelled Certificate of Eligibility to which the Tax Credit Balance Certificate relates;

(d) The amount tax credits represented by such Tax Credit Balance Certificate; and

(e) The Fiscal Year or Fiscal Years in which such Designated Investor shall be eligible to apply for tax credits represented by such Tax Credit Balance Certificate.

(~~10~~11) During each the Fiscal Year set forth on a Tax Credit Balance Certificate, a Designated Investor may apply for Certification of the tax credits represented by such Tax Credit Balance Certificate by presenting it to the Board no later than June

30 of such Fiscal Year. If for any reason a Designated Investor fails to present its Tax Credit Balance Certificate to the Board in a timely fashion, such Tax Credit Balance Certificate shall automatically expire without further action of the Board and any amount of tax credits represented thereby shall be forfeited.

(a) The amount of tax credits represented by a Tax Credit Balance Certificate that the Board is permitted to certify in a Fiscal Year upon application by a Designated Investor will be calculated and allocated in accordance with section 13 of this ~~rule 7-6~~R357-7-6.

(b) Prior to Certification, the Board will determine the amount of funds available in the Redemption Reserve and payments shall be made in a manner consistent with that specified in section 7(c) of this ~~rule 7-6~~R357-7-6.

(c) Prior to Certification, the Board, at its election, may make a demand upon a Designated Purchaser to purchase the tax credits represented by the Tax Credit Balance Certificate in accordance with U.C.A. Section 63N-6-409.

(d) No later than September 1 of the applicable Fiscal Year set forth in applying Designated Investor's Tax Balance Certificate, the Board shall determine and certify to such Designated Investor the amount of tax credits related to such Tax Credit Balance Certificate (if any) that may be redeemed in such Fiscal Year.

(e) The Board shall issue to the Designated Investor a Tax Credit Redemption Certificate setting forth the amount of certified tax credits represented by such certificate (if any) that may be claimed by the Designated Investor, in accordance with U.C.A. Section 63N-6-408 and ~~rule 7-11~~R357-7-11.

(f) Once a tax credit has been certified for redemption, the Board will notify the Commission of such certification within five Business Days.

(g) Upon Certification for redemption of a Tax Credit Balance Certificate, the Board shall cancel such Tax Credit Balance Certificate.

(h) To the extent that, in accordance with section ~~11~~(a) of this ~~rule 7-6~~R357-7-6, the Board was not permitted to certify all of the tax credits represented by a Designated Investor's Tax Credit Balance Certificate in the Fiscal Year applied for, upon cancellation of the Tax Credit Balance Certificate in accordance with section ~~12~~(g) of this ~~rule 7-6~~R357-7-6, the Board shall issue to such Designated Investor a new Tax Credit Balance Certificate for the amount of remaining tax credits that were limited by section ~~7~~(a) of this ~~rule 7-6~~R357-7-6, and the Designated Investor may apply for Certification of such certificate in the following Fiscal Year or Fiscal Years in accordance with this section ~~11~~.

(~~11~~12) The amount of Economic Development Impact certified by the Board in accordance with ~~rule 7-9~~R357-7-9 shall be allocated to each Designated Investor in accordance with this section 12.

(a) The amount of Economic Development Impact measured in accordance with sections 2 and 3 of ~~rule 7-9~~R357-7-9 shall be allocated to each Designated Investor of the applicable Utah Fund of Funds on a pro rata basis, based on its aggregate capital commitment to such applicable Utah Fund of Funds compared to the aggregate capital commitments of all other Designated Investors in such applicable Utah Fund of Funds.

(b) The amount of Economic Development Impact measured in accordance with section 4 of ~~[rule 7-9]~~R357-7-9 shall be allocated to the Designated Investors of the various Utah Funds of Funds as determined by the contractual agreements between such Designated Investors and such Utah Funds of Funds with respect to such Designated Investors' respective Private Investments in such Utah Funds of Funds.

(c) The amount of Economic Development Impact determined in accordance with section 5 of ~~[rule 7-9]~~R357-7-9 shall be allocated:

(i) to each Designated Investor of the applicable Utah Fund of Funds on a pro rata basis based on its aggregate capital commitment to such applicable Utah Fund of Funds compared to the aggregate capital commitments of all other Designated Investors in such applicable Utah Fund of Funds, if such Economic Development Impact is in respect of an applicable Utah Fund of Funds; or

(ii) to the Designated Investors of the various Utah Funds of Funds as determined by the contractual agreements between such Designated Investors and such Utah Funds of Funds with respect to such Designated Investors' respective Private Investments in such Utah Funds of Funds, if such Economic Development Impact is in respect of the activities of the Corporation.

~~[(12)]~~13 The maximum amount of tax credits the Board is permitted to certify in accordance with this ~~[rule 7-6]~~R357-7-6 with respect to Certificates of Eligibility and Tax Credit Balance Certificates presented to the Board by Designated Investors of a Utah Fund of Funds in any Fiscal Year shall be calculated on a proportional basis in the proportions set forth in U.C.A. Section 63N-6-406(2)(c). For the purposes of such calculation:

(a) The \$100,000,000 increment set forth in U.C.A. Section 63N-6-406(2)(c) shall be determined by reference to the aggregate capital commitments made by each of the Designated Investors that is eligible to apply for such credits in such Fiscal Year, as set forth on the applicable Certificate of Eligibility of such Designated Investor; and

(b) Available tax credits shall be allocated among such Designated Investors on a pro rata basis in accordance with on their respective capital commitments to the applicable Utah Fund of Funds.

~~[(13)]~~14 A tax credit represented by a Certificate of Eligibility or Tax Credit Balance Certificate may only be redeemed by a Designated Investor in accordance with the terms of the Certificate of Eligibility or Tax Credit Balance Certificate, as applicable, this ~~[rule 7-6]~~R357-7-6 and U.C.A. Section 63N-6-408.

~~[(14)]~~15 The agreements between a Utah Fund of Funds and a Designated Investor regarding a Private Investment shall provide that upon timely presentation of the Certificate of Eligibility applicable to such Private Investment to the Board for Certification of tax credits represented by such certificate in accordance with this ~~[rule 7-6]~~R357-7-6 by such Designated Investor or its Transferee, such Designated Investor shall be deemed to have assigned to the Corporation effective as of the Determination Date a portion of such Designated Investor's Private Investment in the applicable Utah Fund of Funds equal to a fraction, calculated as of the Determination Date, the numerator of which is the amount of such Designated Investor's Tax Credit Eligibility and the denominator of which is the Shortfall attributable to such Designated Investor's Private Investment. Such assignment shall

include, without limitation, any and all rights to distributions, dividends, redemption proceeds or other payments from such Utah Fund of Funds attributable to such Private Investment that are made after the Determination Date. Any distributions, dividends, redemption proceeds or other payments made by such Utah Fund of Funds after the Determination Date with respect to such assigned interest to such Designated Investor shall reduce the amount of tax credits that may be issued with respect to the applicable Certificate of Eligibility. Any amounts received by the Corporation with respect to such assigned interest shall be paid first to the state of Utah in an amount up to the amount of tax credits granted by the state of Utah to such Designated Investor and the balance shall be retained by the Corporation to be included in the Redemption Reserve.

R357-7-7. Transfer of Certificates, Tax Credit Redemption Certificates, Certificates of Eligibility and Tax Credit Balance Certificates.

(1) Certificates, Certificates of Eligibility, Tax Credit Redemption Certificates and Tax Credit Balance Certificates shall be transferrable in whole or in part by a Designated Investor to any Transferee or Transferees.

(2) Transfer of a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate may be effected by the Transferor's surrender of such certificate to the Board with an endorsement in favor of the Transferee, a statement containing the name, address and taxpayer identification number of the Transferee and a written request for the Board to issue a replacement certificate in the name of the Transferee.

(a) In any case where the Transferor requests that more than one replacement certificate be issued, such request must be accompanied by a statement by the Transferor that sets forth the amount of tax credits represented by the Transferred Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate that are requested to be represented by each replacement Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate.

(3) Within 20 Business Days after the surrender and endorsement of a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, the Board shall issue one or more replacement Certificates, Certificates of Eligibility, Tax Credit Redemption Certificates or Tax Credit Balance Certificates, as applicable, in the name of the applicable Transferee. If a Transferor requests the Transfer of only a portion of a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, the Board shall issue a replacement Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate to the Transferor setting forth the aggregate amount of remaining tax credits represented by such Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate.

(4) Upon the surrender of a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate to the Board, and the issuance of the applicable replacement certificate or certificates for Transfer, such surrendered certificate shall be cancelled.

(5) A Designated Investor may grant security interests in such Designated Investor's Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate,

and any tax credits represented thereby, as collateral for loans to or other obligations of such Designated Investor. The Designated Investor shall provide notice to the Board of any such grant of a security interest promptly after any such grant is made.

(6) A Designated Investor shall be entitled to Transfer a Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate without also transferring its corresponding Private Investment in a Utah Fund of Funds. In such event, a Transferee will be entitled to exercise its rights with respect to a Transferred Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate, as described in such certificate, and as set forth in the Act and the rules set forth in this chapter, by reference to the portion of the Transferor's Private Investment held prior to such Transfer that bears the same proportion to the Transferor's total Private Investment held prior to such Transfer that the tax credits represented by such Transferred Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate bears to the total tax credits represented by the Transferor's Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate prior to such Transfer, as if such portion of the Transferor's Private Investment had been Transferred to the Transferee. Accordingly, the Capital Invested, Scheduled Return, and Actual Return applicable to the Transferee shall be determined by reference to such portion of the Transferor's Private Investment, including amounts related to principal loaned, capital contributed, receipts and returns that are transacted prior to such Transfer with respect to such portion. If a Transferor does not hold a Private Investment, a Transferee of a Transferred Certificate, Certificate of Eligibility, Tax Credit Redemption Certificate or Tax Credit Balance Certificate shall be entitled to the exercise the rights with respect thereto by reference to the Private Investment of such Transferor's predecessor or successor in interest, as the case may be, in the same proportions as described above.

R357-7-8. Criteria and Procedures for Assessing the Likelihood of Future Certificate Redemption.

(1) Each year, the Corporation and/or the allocation manager designated in accordance with U.C.A. Section 63N-6-301(2)(b) will provide the Board with a comprehensive report including the following:

(a) A detailed accounting of cash outflows and cash inflows from investments made by each Utah Fund of Funds during the previous Calendar Year.

(b) A detailed accounting of payments made to lenders to or equity investors in each Utah Fund of Funds during the previous Calendar Year.

(c) A detailed accounting of management fees paid to the Corporation by each Utah Fund of Funds during the previous Calendar Year.

(d) A detailed accounting of increases or decreases in unrealized value of the assets of each Utah Fund of Funds during the Previous Calendar Year.

(e) A five year projection of cash flows with sensitivity around investment returns, interest rates and distribution pacing for each Utah Fund of Funds.

(f) Third party audit of each Utah Fund of Funds including asset valuation as of the end of the previous Calendar Year.

(g) The internal rate of return on each investment made by each Utah Fund of Funds through the end of the previous Calendar Year.

R357-7-9. Criteria and Procedures for Calculating the Economic Development Impact of Each Utah Fund of Funds and the Corporation for Purposes of Incentive-Based Tax Credits.

The Economic Development Impact attributable to each Utah Fund of Funds for equity-based Private Investments that were initiated on or after July 1, 2015 and to the Corporation shall be measured and determined in accordance with this ~~[rule 7-9]~~R357-7-9.

(1) The Economic Development Impact attributable to each Utah Fund of Funds for equity-based Private Investments determined in accordance with U.C.A. Section 63N-6-406(3)(d)(i) shall be equal to the sum of all investments made by such Utah Fund of Funds directly or indirectly in Utah-based Operating Companies plus verifiable amounts invested in Utah-based Operating Companies and Utah-based Investment Funds by third parties (other than amounts invested directly by a Utah Fund of Funds or indirectly by any portfolio fund held by any Utah Fund of Funds) that are directly facilitated by the Corporation's economic development plan and economic development activities, calculated in accordance with sections 2, 3 and 4 of this ~~[rule 7-9]~~R357-7-9, respectively.

(2) Direct Investments. A direct investment made by a Utah Fund of Funds in a Utah-based Operating Company shall, at the time of determination, be measured by reference to the greater of the Cost of such investment or the Exit Value of such investment.

(a) The "Cost" of a direct investment by a Utah Fund of Funds shall mean the sum of all amounts paid by such Utah Fund of Funds to make debt or equity investments in such Utah-based Operating Company as reported in the financial statements of such Utah Fund of Funds.

(b) The "Exit Value" of a direct investment by a Utah Fund of Funds shall mean, without duplication, the sum of all amounts received upon the sale or other disposition of any debt or equity investments made in such Utah-based Operating Company as reported in the financial statements of such Utah Fund of Funds plus the fair market value of all equity investments held by such Utah Fund of Funds based on the closing sale price of such equity investments on the expiration date of any applicable contractual restrictions on transfer of such equity investments that are entered into by such Utah Fund of Funds in connection with an underwritten initial public offering of such Utah-based Operating Company.

(c) The Exit Value of a direct investment in such Utah-based Operating Company by a Utah Fund of Funds shall apply only to that portion of an investment that is actually sold or otherwise disposed of, or that is held by such Utah Fund of Funds on the expiration date of any applicable contractual restrictions on transfer of equity investments that are entered into by such Utah Fund of Funds in connection with an underwritten initial public

offering of such Utah-based Operating Company; all other direct investments made in a Utah-based Operating Company shall be measured by reference to Cost.

(3) Indirect Investments. An indirect investment made by a Utah Fund of Funds in a Utah-based Operating Company shall, at the time of determination, be measured by reference to the greater of the Cost of such investment or the Exit Value of such investment, in each case as attributable to such Utah Fund of Funds.

(a) The amount of indirect investments attributable to such Utah Fund of Funds in a Utah-based Operating Company shall be the amount of all investments in such Utah-based Operating Company made by a portfolio fund held by such Utah Fund of Funds multiplied by a fraction, the numerator of which is such Utah fund of fund's capital commitment to the applicable portfolio fund and the denominator of which is the aggregate capital commitments of all partners, members or other category of equity investor with similar status of such portfolio fund, each as reported in the financial statements or other investor reports of such portfolio fund.

(b) The "Cost" of a portfolio fund's investment shall mean the sum of all amounts paid by such portfolio fund to make debt or equity investments in such Utah-based Operating Company, as reported in the financial statements or other investor reports of such portfolio fund.

(c) The "Exit Value" of a portfolio fund's investment in such Utah-based Operating Company shall mean, without duplication, the sum of all amounts received upon the sale or other disposition of all debt or equity investments in such Utah-based Operating Company and the value attributed to such investment made at the time of the distribution in kind of such investment to the partners, members or other category of equity investor with similar status of such portfolio fund as reported in the financial statements or other investor reports of such portfolio fund.

(d) The Exit Value of a portfolio fund's investment shall only apply to that portion of the investment that is actually sold, disposed of, or distributed in kind as of the time of determination; all other investments made by a portfolio fund shall be measured by reference to Cost.

(4) Investments by Third Parties Facilitated by the Corporation. Verifiable amounts invested in Utah-based Operating Companies (other than amounts invested directly by a Utah Fund of Funds or indirectly by any portfolio fund held by any Utah Fund of Funds) and in Utah-based Investment Funds that are directly facilitated by the Corporation's economic development plan and economic development activities shall, at the time of determination, be measured as follows:

(a) The amount invested directly by a third party (other than a Utah Fund of Funds or a portfolio fund held by any Utah Fund of Funds) in a Utah-based Operating Company will be included in the Economic Development Impact attributable to the Corporation if the Corporation's facilitation of such investment and the investment amount is confirmed in writing to the Corporation by either such third party or such Utah-based Operating Company in a manner consistent with section 4(c) of this ~~[rule 7.9]~~R357-7-9 and shall be measured in accordance with this section 4(a) by reference to the greater of Cost of such investment or the Exit Value of such investment.

(i) The "Cost" of a direct investment by such third party in a Utah-based Operating Company shall mean the sum of all amounts paid by such third party to make debt or equity

investments in such Utah-based Operating Company as confirmed in writing by such third party in accordance with section 4(c) of this ~~[rule 7.9]~~R357-7-9.

(ii) The "Exit Value" of a direct investment by such third party shall mean, without duplication, the sum of all amounts received upon the sale or other disposition of any debt or equity investments made in such Utah-based Operating Company plus the fair market value of all equity investments held by such third party based on the closing sale price of such equity investments on the expiration date of any applicable contractual restrictions on transfer of such equity investments that are entered into by such third party in connection with an underwritten initial public offering of such Utah-based Operating Company, in each case as confirmed in writing by such third party in accordance with section 4(c) of this ~~[rule 7.9]~~R357-7-9.

(iii) The Exit Value of a direct investment in such Utah-based Operating Company by a Utah Fund of Funds shall apply only to that portion of an investment that is actually sold or otherwise disposed of, or that is held by such third party on the expiration date of any applicable contractual restrictions on transfer of equity investments that are entered into by such third party in connection with an underwritten initial public offering of such Utah-based Operating Company; all other direct investments made in a Utah-based Operating Company by such third party shall be measured by reference to Cost.

(b) The amount invested indirectly by a third party (other than a Utah Fund of Funds or a portfolio fund held by any Utah Fund of Funds) in a Utah-based Operating Company through its investment in a Utah-based Investment Fund will be included in the Economic Development Impact attributable to the Corporation if the Corporation's facilitation of such investment and the investment amount is confirmed in writing to the Corporation by either such third party or such Utah-based Investment Fund in a manner consistent with section 4(c) of this ~~[rule 7.9]~~R357-7-9 and shall be measured in accordance with this section 4(b). The Economic Development Impact of the amount indirectly invested by such third party in a Utah-based Operating Company through its investment in a Utah-based Investment Fund shall, at the time of determination, be measured by reference to the greater of the Cost of such investment or the Exit Value of such investment, in each case, as attributable to such third party.

(i) The amount of indirect investments attributable to such third party in a Utah-based Operating Company shall be the amount of all investments in such Utah-based Operating Company made by such Utah-based Investment Fund multiplied by a fraction, the numerator of which is such third party's capital commitment to such Utah-based Investment Fund and the denominator of which is the aggregate capital commitments of all partners, members or other category of equity investor with similar status of such Utah-based Investment Fund, each as confirmed in writing by the Utah-based Investment Fund in accordance with section 4(c) of this ~~[rule 7.9]~~R357-7-9.

(ii) The "Cost" of such Utah-based Investment Fund's investment shall mean the sum of all amounts paid by such Utah-based Investment Fund to make debt or equity investments in such Utah-based Operating Company, as confirmed in writing by the Utah-based Investment Fund in accordance with section 4(c) of this ~~[rule 7.9]~~R357-7-9.

(iii) The "Exit Value" of a such Utah-based Fund of Fund's investment in such Utah-based Operating Company shall mean, without duplication, the sum of all amounts received upon the sale or other disposition of all debt or equity investments in such Utah-based Operating Company and the value attributed to such investment made at the time of the distribution in kind of such investment to the partners, members or other category of equity investor with similar status of third party as confirmed in writing by the Utah-based Investment Fund in accordance with section 4(c) of this ~~[rule 7-9]~~R357-7-9.

(iv) The Exit Value of a third party's investment shall only apply to that portion of the investment that is actually sold, disposed of, or distributed in kind as of the time of determination; all other investments made by such third party shall be measured by reference to Cost.

(c) The confirmation in writing referred to in sections 4(a) and 4(b) of this ~~[rule 7-9]~~R357-7-9 shall be made by a responsible officer or equivalent representative of the third party, the Utah-based Operating Company or the Utah-based Investment Fund and shall include (i) the identity of the Utah-based Operating Company or the Utah-based Investment Fund, (ii) a statement that the Corporation was a significant factor in an investment in such Utah-based Operating Company or Utah-based Investment Fund having been made, (iii) the Cost of such investment made by such third party through the date of the confirmation, (iv) the amount of commitments by such third party to make additional investments in the future, and (v) to the extent applicable, the Exit Value of such investment made by such third party through the date of the confirmation. A confirmation may be provided from time to time to update the Cost of investments made, any outstanding commitments to invest and the Exit Value of investments, which update shall be taken into account in determining Economic Development Impact attributable to the Corporation through the date of the most recent confirmation. Any such written confirmation may be contained in an email or other electronic transmission.

(d) The Economic Development Impact attributable to the Corporation shall be measured by reference to amounts invested as specified in sections 4(a) and ~~[2]4~~(b) of this ~~[rule 7-9]~~R357-7-9 after enactment of the 2015 amendments to the Utah Venture Capital Enhancement Act.

(5) Third Party Evaluations Authorized by the Board. With approval from the Board, the Corporation may engage an independent third party experienced in evaluating economic development activities to evaluate a Utah Fund of Funds and determine the Economic Development Impact of such Utah Fund of Funds and the activities of the Corporation in accordance with U.C.A. Section 63N-6-406(3)(d)(ii) as follows.

(a) The independent third party shall use a nationally recognized economic development modeling tool approved by the Board.

(b) The Economic Development Impact of a Utah Fund of Funds shall be determined by reference to the economic development impact of the Utah-based Operating Companies in which such Utah Fund of Funds has directly or indirectly invested.

(c) The Economic Development Impact of the Corporation shall be determined by reference to the result of the economic development activities engaged in by the Corporation,

including the facilitation by the Corporation of investment in Utah-based Operating Companies and Utah-based Investment Funds.

(d) The Corporation shall provide to the independent third party all information and documents reasonably available to it that the independent third party requests and determines are necessary for the third party make its determination in accordance with this section 5.

(6) Any determination by an independent third party conducted in accordance with section 5 of this ~~[rule 7-9]~~R357-7-9 shall adjust the Economic Development Impact attributable under sections 2, 3 and 4 of this ~~[rule 7-9]~~R357-7-9 to any Utah Fund of Funds or the Corporation with respect to any investment in a Utah-based Operating Company or Utah-based Investment Fund to account only for Economic Development Impact incremental to the Economic Development Impact that has been attributed under sections 2, 3 and 4 of this ~~[rule 7-9]~~R357-7-9 in order to avoid double counting.

(7) The Corporation's Annual Report made in accordance with U.C.A. Section 63N-6-301(6) shall include the following information.

(a) The amounts invested directly or indirectly by each Utah funds of funds into Utah-based Operating Companies and the resulting measurement of Economic Development Impact determined in accordance with sections 2 and 3 of this ~~[rule 7-9]~~R357-7-9.

(b) The amounts invested in Utah-based Operating Companies (other than amounts invested by portfolio funds held by any Utah Fund of Funds) and Utah-based Investment Funds that are facilitated by the Corporation's economic development plan and activities and the resulting measurement of Economic Development Impact determined in accordance with section 4 of this ~~[rule 7-9]~~R357-7-9.

(c) Any independent third party's evaluations of Economic Development Impact made in accordance with section 5 of this ~~[rule 7-9]~~R357-7-9.

(8) The Auditor's opinion required by U.C.A. Section 63N-6-405(4)(d) shall address the information in the Annual Report included in accordance with section 7 of this ~~[rule 7-9]~~R357-7-9. Such opinion may be based upon the performance by the Auditor of agreed upon procedures as specified by the Board, which procedures may include reliance upon the financial statements or other investor reports of the portfolio funds of the Utah Fund of Funds, the certifications of the third party investors, Utah-based Operating Companies and Utah-based Investment Funds made in accordance with sections 2, 3 and 4 of this ~~[rule 7-9]~~R357-7-9 and the most recent determinations of any independent third party made in accordance with section 5 of this ~~[rule 7-9]~~R357-7-9, in each case without the need to verify the accuracy of such financial statements, certifications or determinations.

(9) The Board shall review the amount of Economic Development Impact reported by the Corporation in accordance with section 5 of this ~~[rule 7-10]~~R357-7-9 and within 45 Business Days, unless good cause exists to extend the number of days, following receipt from the Corporation of the ~~[Corporation's Annual Report]~~report of the independent third party the Board shall either (a) approve the amount of Economic Development Impact stated in the report, or

(b) notify the Corporation of any disagreement with such amount setting forth the reasons for such disagreement.

(a) Upon approval of the amount of Economic Development Impact set forth in the report, the Board shall certify the Economic Development Impact to the Corporation.

(b) If the Board notifies the Corporation of its disagreement with the amount of Economic Development Impact stated in the report, the Corporation shall respond in writing to the Board within 15 Business Days of receipt of notice from the Board of its disagreement. The Corporation's response shall include either an explanation addressing the Board's reasons for disagreement or a revised determination of the amount of Economic Development Impact and the basis therefore.

(c) The Board shall certify to the Corporation within 15 Business Days of receipt of such explanation or revised determination that it agrees with such explanation or revised determination, or shall state its reasons for disagreement and the procedure set forth in section [7]9(b) of this [rule 7-9]R357-7-9, and this section [7]9(c) shall continue until all such determinations have been certified by the Board.

(d) The Corporation shall provide to the Board all information and documents reasonably available to it that the Board requests and determines are necessary for the Board to make its certification in accordance with this section [7]9.

(10) The Board shall review the amount of Economic Development Impact reported by the Corporation in accordance with section 7 of this [rule 7-9]R357-7-9 and within 40 Business Days following receipt of the Corporation's Annual Report the Board shall either (a) approve the amount of Economic Development Impact stated in the report, or (b) reduce such amount by the amount of Economic Development Impact it determines to have been counted in more than one category.

(a) Upon approval of the amount of Economic Development Impact set forth in the report, the Board shall certify the Economic Development Impact to the Corporation.

(b) If the Board determines to make a reduction to avoid double counting, it shall notify the Corporation such determination. The Corporation shall respond in writing to the Board within 15 Business Days of receipt of such a notice from the Board. The Corporation's response shall include an explanation addressing the Board's reasons for reduction or a revised determination of the amount of Economic Development Impact and the basis therefore.

(c) The Board shall certify to the Corporation within 15 Business Days of receipt of such explanation or revised determination that it agrees with such explanation or revised determination, or shall state its reasons for reduction and the procedure set forth in section [9]10(b) of this [rule 7-9]R357-7-9, and this section [9]10(c) shall continue until all such determinations have been certified by the Board.

(d) The Corporation shall provide to the Board all information and documents reasonably available to it that the Board requests and determines are necessary for the Board to make its certification in accordance with this section 9.

(11) The total amount of Economic Development Impact as of any Determination Date shall be the sum of the Economic Development Impact for each year through the Determination Date, determined in accordance with section 9 of this [Rule 7-9]R357-7-9.

R357-7-10. Criteria for Establishing the Target Rate of Return of the Investment Portfolio.

For investment portfolios of each Utah Fund of Funds:

(1) The "Target Rate of Return" on venture capital investments of such Utah Fund of Funds is a minimum of 5%. The Corporation will submit to the Board annually a detailed accounting of the calculation of the rate of return. It is understood by the Board that returns in the early years of each Utah Fund of Funds will likely be negative.

R357-7-11. Claiming Tax Credits Represented by Tax Credit Redemption Certificates.

(1) Once certified by the [b]Board, the holder of [the]a [t]Tax [e]Credit Redemption [e]Certificate may present such [e]Certificate to the [e]Commission [for redemption subject to]to claim a tax credit in accordance with the following provisions:

(a) The [~~e]ontingent~~]tax credit [~~certified by the board~~]represented by the Tax Credit Redemption Certificate shall be claimed for [a]the tax year of the [d]Designated [i]Investor[s, or transferee,]that begins during the [same]Calendar [y]Year [as]the [stated maturity date listed on such]Board has certified such Tax Credit Redemption [e]Certificate. The [d]Designated [i]Investor [~~or a transferee of the Certified Contingent Credit~~]may submit to the [e]Commission at any time following the date of [such]issuance of the Tax Credit Redemption [e]Certificate [ion]e by the [b]Board, but no later than the general filing deadline for Utah State tax returns (including extensions) of the tax year for which the redemption [year]may be claimed.

(b) The [p]Person [~~or entity~~]claiming a refund must timely file a Utah State tax return claiming a refundable credit; and no other filing or forms or actions are necessary, and no other conditions apply, for obtaining a refund in respect of such tax credit. The [e]Commission will manually process a tax return with a claim for refund [~~certified by the board~~]and will pay the amount indicated on such tax return (such payment generally, but not always, made within ninety (90) days from the date for such return [(the "Due Date")]). If the [b]Board has notified the [e]Commission of the filing of a claim for refund by the [d]Designated [i]Investor, the [e]Commission will take steps to expedite the refund.

(2) There is no limitation on a [p]Person:

(a) filing more than one claim for refund with the [e]Commission, or

(b) receiving more than one refund from the [e]Commission, in each case, in any one [e]Calendar [y]Year or other twelve (12) month period.

(3) If [~~an entity~~]a Person is not otherwise a Utah taxpayer, its taxable year, for purposes of these [Utah Act]rules, shall be considered to end annually on the same date that its tax year ends for [US]United States federal income tax purposes. For a disregarded entity that is not otherwise a Utah taxpayer, such entity may designate any date on which its taxable year ends by stating such date on the Utah tax return on which it files its claim for refund.

(4) If the Designated [i]Investor [~~or any transferee~~]is a corporation or other business organization or entity included in a combined Utah state tax return, and such tax return claims a tax credit, the commission will treat such tax credit as a refundable credit for the combined group.

R357-7-12. Certificate Register.

The Certificate Register detailing all transactions involving the Certificates, Certificates of Eligibility, Tax Credit Redemption Certificates and Tax Credit Balance Certificates shall be held and maintained at the Office of the Utah Treasurer.

KEY: economic development, capital investments, tax credits, Utah Capital Investment Board

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, Implemented, or Interpreted Law: 63N-6-203

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Commerce, Administration **R151-4** Department of Commerce Administrative Procedures Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40265
FILED: 03/15/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R151-4 is adopted under Subsection 63G-4-102(6) and Section 13-1-6 to define, clarify, or establish the procedures that govern adjudicative proceedings before the department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department and its agencies continue to conduct administrative adjudicative proceedings, which are governed by this rule, so the rule is still needed to help define the procedures for proceedings before the Department. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Gregory Soderberg by phone at 801-530-6706, or by Internet E-mail at gsoderberg@utah.gov

AUTHORIZED BY: Thomas Brady, Deputy Director

EFFECTIVE: 03/15/2016

Environmental Quality, Waste Management and Radiation Control, Radiation **R313-26** Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40259
FILED: 03/10/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-3-104 provides the Radiation Control Board authority to make rules to protect the public and environment from sources of radiation. Section 19-3-106.4 requires a generator or waste collector (Broker) of low-level radioactive waste to obtain a site access permit prior to transferring or shipping waste to a commercial radioactive waste treatment or disposal facility located in Utah. The purpose of this rule is to establish criteria and terms and conditions upon which the director issues permits to generators accessing a land disposal facility located within the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The rule has had two proposed changes that have been published for public comment. One received no comments. The other received one comment which is summarized as follows: some of the proposed changes may overreach the intent of H.B. 124 (2013 General Session) and place the state in a position for potential litigation. The rule change was withdrawn.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it establishes the requirements and conditions for issuing a site access permit to generators or brokers. Once a permit is issued, it allows them to ship waste to a commercial radioactive waste facility in Utah. The rule also provides regulation for compliance inspections of shipments.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 03/10/2016

Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-15
Standards for the Management of Used
Oil

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40260
FILED: 03/10/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-6-704 instructs the Waste Management and Radiation Control Board to make rules under Title 63G, Chapter 3, "Utah Administrative Rulemaking Act", as necessary to administer this part and to comply with 40 CFR 279, "Standards for the Management of Used Oil", to ensure the state's primacy to manage used oil under 40 CFR 279. Rule R315-15 meets this requirement.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The rule was modified three times since the last five-year review. No comments were received on two of the modifications. The third modification received comments as follows: proposed changes remove the requirement of the agency to offer a split sample of material sampled during an agency inspection; proposed changes do not define containers and tanks; comments related to the secondary containment requirements for containers and tanks for used oil storage; the burden of proof for PCB content should be placed on the used oil generator; the term "suspicious" is subjective; requests to remove the requirement for laboratories to be Utah certified from the proposed changes to Rule R315-15 or adding language that allows use for non-Utah certified laboratories as means of testing based on approval from the Director; and recommendation to change the proposed text in Subsection R315-15-18(e)(3) to read "individual Aroclors (registered trademark) shall be reported with a reporting limit of 2ppm or less."

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 19-6-740 requires that rules be maintained that allow the state to maintain authorization from

US EPA for a used oil program. The current rules meet this requirement. None of the comments received objected to the rule as a whole. The comments were on specific changes to the rule. All comments were reviewed and several suggested changes that made the rule clearer or better. Other comments were found to be inconsistent with the rule as a whole or were unnecessary and were rejected.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 03/10/2016

**Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-17
End of Life Automotive Mercury Switch
Removal Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40261
FILED: 03/10/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Board is instructed in Section 19-6-1003 to make rules: (a) governing administrative proceedings under this part (part 10); (b) specifying the terms and conditions under which the director shall approve, disapprove, revoke, or review a plan submitted by a manufacturer; and (c) governing reports and educational materials required by this part.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: The rule was modified once since the last five-year review. No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is required by Section 19-6-1003 and sets the standards and reports that are required for a mercury switch removal program in Utah. The rule also makes possible reimbursement for mercury switches removed. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 03/10/2016

**Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-101
Cleanup Action and Risk-Based
Closure Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40262
FILED: 03/10/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-6-105(d) allows the Waste Management and Radiation Control Board to make rules instructing property owners to take appropriate corrective action or other response measures for releases of hazardous waste or hazardous waste constituents from the facility, including releases beyond the boundaries of the facility.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The rule has been modified once since that last five-year review and no comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is needed to give direction to persons that want to remove contamination for the soil at a site and to give the standards that must be met to allow specific uses of the property. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 WASTE MANAGEMENT AND RADIATION CONTROL, WASTE MANAGEMENT
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 03/10/2016

**Environmental Quality, Waste
 Management and Radiation Control,
 Waste Management
 R315-102
 Penalty Policy**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 40263
 FILED: 03/10/2016

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-6-104(3)(d) states that the Board shall meet the requirements of federal law related to solid and hazardous wastes to ensure that the solid and hazardous wastes program provided for in this part is qualified to assume primacy from the federal government in control over solid and hazardous waste. 40 CFR 271.16 outlines the federal requirements for enforcement authority that must be met for a state to receive primacy for the hazardous waste program. One of the requirements for primacy (40 CFR 271.16(c)) is that the penalty shall be appropriate to the violation. Rule R315-102 was adopted by the Board to meet the requirements of Subsection 19-6-104(3)(d) and 40 CFR 271.16(c). The rule establishes the criteria the director will use for proposed penalties that are negotiated with parties that have violated the hazardous waste rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The rule was modified once during the five-year review period and no comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to give the director guidance when negotiating a penalty with a person of facility or permittee. The rule guidance allows the director to be consistent in assessing penalties. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 WASTE MANAGEMENT AND RADIATION CONTROL, WASTE MANAGEMENT
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 03/10/2016

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Commerce

Occupational and Professional Licensing

No. 40000 (AMD): R156-47b. Massage Therapy Practice Act Rule

Published: 01/15/2016

Effective: 03/08/2016

Education

Administration

No. 40098 (AMD): R277-494. Charter, Online, Home, and Private School Student Participation in Extracurricular or Co-curricular School Activities

Published: 02/01/2016

Effective: 03/09/2016

No. 40100 (AMD): R277-510. Educator Licensing - Highly Qualified Assignment

Published: 02/01/2016

Effective: 03/09/2016

Rehabilitation

No. 40102 (AMD): R280-204. Utah State Office of Rehabilitation Employee Background Check Requirement

Published: 02/01/2016

Effective: 03/09/2016

Environmental Quality

Air Quality

No. 39994 (AMD): R307-101-2. Definitions

Published: 01/01/2016

Effective: 03/03/2016

No. 39995 (NEW): R307-104. Conflict of Interest

Published: 01/01/2016

Effective: 03/03/2016

Radiation Control

No. 39989 (AMD): R313-15. Standards for Protection Against Radiation

Published: 01/01/2016

Effective: 03/15/2016

No. 39990 (AMD): R313-19-34. Terms and Conditions of Licenses

Published: 01/01/2016

Effective: 03/15/2016

No. 39992 (AMD): R313-24. Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements

Published: 01/01/2016

Effective: 03/15/2016

Governor

Economic Development

No. 40027 (NEW): R357-13. Hotel Convention Center Incentive

Published: 01/15/2016

Effective: 03/14/2016

Health

Administration

No. 40049 (AMD): R380-40. Local Health Department Minimum Performance Standards

Published: 01/15/2016

Effective: 03/02/2016

Health Care Financing, Coverage and Reimbursement Policy

No. 40043 (AMD): R414-1-5. Incorporations by Reference

Published: 01/15/2016

Effective: 03/08/2016

NOTICES OF RULE EFFECTIVE DATES

No. 39985 (AMD): R414-1A. Medicaid Policy for
Experimental, Investigational or Unproven Medical Practices
Published: 01/01/2016
Effective: 03/08/2016

No. 40040 (AMD): R414-303-8. Foster Care, Former Foster
Care Youth and Independent Foster Care Adolescents
Published: 01/15/2016
Effective: 03/08/2016

Housing Corporation (Utah)
Administration

No. 40012 (AMD): R460-2. Definition of Terms Used
Throughout R460
Published: 01/15/2016
Effective: 03/09/2016

No. 40018 (AMD): R460-3. Programs of UHC
Published: 01/15/2016
Effective: 03/09/2016

Human Services

Recovery Services

No. 40096 (AMD): R527-40. Retained Support
Published: 02/01/2016
Effective: 03/09/2016

Natural Resources

Wildlife Resources

No. 40094 (AMD): R657-3. Collection, Importation,
Transportation, and Possession of Animals
Published: 02/01/2016
Effective: 03/09/2016

No. 40093 (AMD): R657-33. Taking Bear
Published: 02/01/2016
Effective: 03/09/2016

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2016 through March 15, 2016. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Facilities Construction and Management</u>					
R23-19	Facility Use Rules	40226	NSC	03/11/2016	Not Printed
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40044	NSC	01/15/2016	Not Printed
<u>Finance</u>					
R25-7-10	Reimbursement for Transportation	40042	AMD	02/23/2016	2016-2/4
R25-15	Change Date and Set Aside Provisions for Annual Leave II	39943	NEW	01/13/2016	2015-23/6
<u>Purchasing and General Services</u>					
R33-6-114	Technology Acquisitions for Executive Branch Procurement Units	40048	AMD	02/23/2016	2016-2/6
R33-12-502	Technology Modifications	40047	AMD	02/23/2016	2016-2/7
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-3	Government Records Access and Management Act	40234	5YR	02/29/2016	2016-6/27
R51-4	ADA Complaint Procedure	40235	5YR	02/29/2016	2016-6/27
<u>Horse Racing Commission (Utah)</u>					
R52-7	Horse Racing	39951	AMD	02/02/2016	2015-24/4
<u>Marketing and Development</u>					
R65-8	Management of the Junior Livestock Show Appropriation	40233	5YR	02/29/2016	2016-6/28
<u>Plant Industry</u>					
R68-4	Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products	40201	5YR	02/08/2016	2016-5/23
R68-7	Utah Pesticide Control Rule	40232	5YR	02/29/2016	2016-6/28
R68-9	Utah Noxious Weed Act	39965	AMD	02/02/2016	2015-24/8
R68-18	Quarantine Pertaining to Karnal Bunt	40200	5YR	02/08/2016	2016-5/23
<u>Regulatory Services</u>					
R70-410	Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes	40149	5YR	01/20/2016	2016-4/77
R70-530	Food Protection	39950	AMD	02/02/2016	2015-24/12

CAPITOL PRESERVATION BOARD (STATE)

Administration

R131-4	Capitol Preservation Board General Procurement Rule	40092	5YR	01/11/2016	2016-3/507
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COMMERCE

Administration

R151-4	Department of Commerce Administrative Procedures Act Rule	40265	5YR	03/15/2016	Not Printed
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Occupational and Professional Licensing

R156-3a	Architect Licensing Act Rule	40058	5YR	01/07/2016	2016-3/507
R156-9a	Uniform Athlete Agents Act Rule	40071	5YR	01/07/2016	2016-3/508
R156-26a	Certified Public Accountant Licensing Act Rule	39982	AMD	02/11/2016	2016-1/4
R156-37f	Controlled Substance Database Act Rule	39923	AMD	01/07/2016	2015-23/7
R156-46b	Division Utah Administrative Procedures Act Rule	40052	5YR	01/05/2016	2016-3/509
R156-47b	Massage Therapy Practice Act Rule	40000	AMD	03/08/2016	2016-2/8
R156-55c	Plumber Licensing Act Rule	40131	NSC	02/02/2016	Not Printed
R156-60b-102	Definitions	39924	AMD	01/07/2016	2015-23/12
R156-60c	Clinical Mental Health Counselor Licensing Act Rule	39911	AMD	01/07/2016	2015-23/14
R156-60d	Substance Use Disorder Counselor Act Rule	40055	5YR	01/05/2016	2016-3/509
R156-67	Utah Medical Practice Act Rule	40196	5YR	02/08/2016	2016-5/24
R156-69	Dentist and Dental Hygienist Practice Act Rule	40150	5YR	01/21/2016	2016-4/77
R156-73	Chiropractic Physician Practice Act Rule	40208	5YR	02/11/2016	2016-5/25
R156-78-102	Definitions	39912	AMD	01/07/2016	2015-23/16
R156-82-201	Security	39980	AMD	02/08/2016	2016-1/12

Real Estate

R162-2f	Real Estate Licensing and Practices Rules	40041	AMD	02/23/2016	2016-2/11
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EDUCATION

Administration

R277-207	Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions	39837	NEW	01/11/2016	2015-21/17
R277-404	Requirements for Assessments of Student Achievement	40097	NSC	02/02/2016	Not Printed
R277-494	Charter, Online, Home, and Private School Student Participation in Extracurricular or Co-curricular School Activities	40098	AMD	03/09/2016	2016-3/6
R277-497	School Grading System	39984	AMD	02/08/2016	2016-1/13
R277-510	Educator Licensing - Highly Qualified Assignment	40099	5YR	01/14/2016	2016-3/510
R277-510	Educator Licensing - Highly Qualified Assignment	40100	AMD	03/09/2016	2016-3/8
R277-705	Secondary School Completion and Diplomas	39936	AMD	01/07/2016	2015-23/17
R277-716	Alternative Language Services for Utah Students	40211	5YR	02/16/2016	2016-5/25
R277-726	Statewide Online Education Program	39996	AMD	02/08/2016	2016-1/15
R277-920	Implementation of the School Turnaround and Leadership Development Act	39789	NEW	02/08/2016	2015-20/70
R277-920-3	Superintendent's Designation of Low Performing Schools and Waiver Authority	39997	AMD	02/08/2016	2016-1/20

Rehabilitation

R280-204	Utah State Office of Rehabilitation Employee Background Check Requirement	40101	5YR	01/14/2016	2016-3/510
R280-204	Utah State Office of Rehabilitation Employee Background Check Requirement	40102	AMD	03/09/2016	2016-3/11

RULES INDEX

ENVIRONMENTAL QUALITY

Air Quality

R307-101-2	Definitions	39994	AMD	03/03/2016	2016-1/21
R307-104	Conflict of Interest	39995	NEW	03/03/2016	2016-1/28
R307-110-28	Regional Haze	39849	AMD	02/04/2016	2015-21/45
R307-312-5	Hot Mix Asphalt Plants	39844	AMD	02/04/2016	2015-21/46
R307-328-4	Loading of Tank Trucks, Trailers, Railroad Tank Cars, and Other Transport Vehicles	39845	AMD	02/04/2016	2015-21/47
R307-351-4	Standards for Rotogravure, Flexographic, and Specialty Printing Operations	40225	NSC	03/11/2016	Not Printed
R307-403-2	Applicability	40193	NSC	02/25/2016	Not Printed
R307-405-3	Definitions	39846	AMD	02/04/2016	2015-21/48
R307-415-3	Definitions	39847	AMD	02/04/2016	2015-21/50

Radiation Control

R313-15	Standards for Protection Against Radiation	39989	AMD	03/15/2016	2016-1/29
R313-19-34	Terms and Conditions of Licenses	39990	AMD	03/15/2016	2016-1/32
R313-24	Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements	39992	AMD	03/15/2016	2016-1/38

Waste Management and Radiation Control, Radiation

R313-15	Standards for Protection Against Radiation	40003	NSC	01/15/2016	Not Printed
R313-16-230	Registration of Radiation Machines	40004	NSC	01/15/2016	Not Printed
R313-18-11	Posting of Notices to Workers	40007	NSC	01/15/2016	Not Printed
R313-21	General Licenses	40008	NSC	01/15/2016	Not Printed
R313-22	Specific Licenses	40009	NSC	01/15/2016	Not Printed
R313-26	Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities	40259	5YR	03/10/2016	Not Printed
R313-27	Medical Use Advisory Committee	40230	NSC	03/08/2016	Not Printed
R313-32-2	Clarifications or Exceptions	40010	NSC	01/15/2016	Not Printed
R313-70	Payments, Categories and Types of Fees	40011	NSC	01/15/2016	Not Printed

Waste Management and Radiation Control, Waste Management

R315-15	Standards for the Management of Used Oil	40260	5YR	03/10/2016	Not Printed
R315-17	End of Life Automotive Mercury Switch Removal Standards	40261	5YR	03/10/2016	Not Printed
R315-101	Cleanup Action and Risk-Based Closure Standards	40262	5YR	03/10/2016	Not Printed
R315-102	Penalty Policy	40263	5YR	03/10/2016	Not Printed

Water Quality

R317-1-3	Requirements for Waste Discharges	39981	AMD	02/25/2016	2016-1/40
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FAIR CORPORATION (UTAH STATE)

Administration

R325-1	Utah State Fair Competitive Exhibitor Rules	40220	5YR	02/23/2016	2016-6/29
R325-2	Utah State Fair Commercial Exhibitor Rules	40221	5YR	02/23/2016	2016-6/30
R325-3	Utah State Fair Patron Rules	40222	5YR	02/23/2016	2016-6/30
R325-4	Interim Patrons Rules (Other Than Utah State Fair)	40223	5YR	02/23/2016	2016-6/31
R325-5	Interim Renters Rules (Other Than Utah State Fair)	40224	5YR	02/23/2016	2016-6/32

FINANCIAL INSTITUTIONS

Administration

R331-26	Ownership of Real Estate Other Than Property Used for Institution Business or Held as an Investment by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions	40139	5YR	01/15/2016	2016-3/511
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GOVERNOR

Criminal and Juvenile Justice (State Commission on)

R356-1	Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates	39964	AMD	02/10/2016	2015-24/14
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Economic Development

R357-13	Hotel Convention Center Incentive	40027	NEW	03/14/2016	2016-2/76
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HEALTH

Administration

R380-40	Local Health Department Minimum Performance Standards	40049	AMD	03/02/2016	2016-2/79
R380-60	Local Health Department Emergency Protocols	39879	AMD	01/20/2016	2015-22/32

Center for Health Data, Vital Records and Statistics

R436-13	Disclosure of Records	39817	AMD	02/17/2016	2015-21/88
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Child Care Center Licensing Committee

R381-60	Hourly Child Care Centers	39902	AMD	01/31/2016	2015-22/34
R381-70	Out of School Time Child Care Programs	39898	AMD	01/31/2016	2015-22/40
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R432-270	Assisted Living Facilities	39966	AMD	01/28/2016	2015-24/41

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R414-303-8	Foster Care, Former Foster Care Youth and Independent Foster Care Adolescents	40040	AMD	03/08/2016	2016-2/89
R414-320	Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver	40181	5YR	02/01/2016	2016-4/78
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R460-4	Additional Servicing Rules (Reserved)	40014	NSC	01/15/2016	Not Printed
R460-5	Termination of Eligibility to Participate in Programs	40015	NSC	01/15/2016	Not Printed
R460-6	Adjudicative Proceedings	40016	NSC	01/15/2016	Not Printed
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R651-405	Off-Highway Implement of Husbandry Sticker Fee	40088	5YR	01/07/2016	2016-3/526
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R657-9	Taking Waterfowl, Wilson's Snipe and Coot	39978	AMD	02/08/2016	2016-1/66
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R661-3	Utah Navajo Trust Fund Residency Policy	40021	NEW	02/29/2016	2016-2/105
R661-4	Utah Navajo Trust Fund Chapter Projects	40022	NEW	02/29/2016	2016-2/107
R661-5	Utah Navajo Trust Fund Blue Mountain Dine' Community	40023	NEW	02/29/2016	2016-2/109
R661-6	Utah Navajo Trust Fund Higher Education Financial Assistance and Scholarship Program	40024	NEW	02/29/2016	2016-2/110
R661-7	Utah Navajo Trust Fund Housing Projects Policy	40025	NEW	02/29/2016	2016-2/113
R661-8	Utah Navajo Trust Fund Power Lines and House Wiring Program	40026	NEW	02/29/2016	2016-2/115

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R708-43	Verification of Personal Identifying Information by Depository Institutions	40146	5YR	01/19/2016	2016-4/84
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R714-162	Equipment Standards for Heavy Truck, Trailer and Bus Safety Inspections	40199	EXT	02/08/2016	2016-5/29
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ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

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<u>activities</u> Education, Administration	40098	R277-494	AMD	03/09/2016	2016-3/6
<u>adjudicative procedures</u> Natural Resources, Forestry, Fire and State Lands	40134	R652-8	5YR	01/14/2016	2016-3/529
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	40135	R652-80	5YR	01/14/2016	2016-3/531	
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	39849	R307-110-28	AMD	02/04/2016	2015-21/45	
	39844	R307-312-5	AMD	02/04/2016	2015-21/46	
	39845	R307-328-4	AMD	02/04/2016	2015-21/47	
	40225	R307-351-4	NSC	03/11/2016	Not Printed	
	39846	R307-405-3	AMD	02/04/2016	2015-21/48	
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	40091	R651-206	NSC	02/02/2016	Not Printed
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	40189	R651-208	NSC	02/25/2016	Not Printed
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	40190	R651-210	NSC	02/25/2016	Not Printed
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	40070	R651-212	5YR	01/07/2016	2016-3/519
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	40077	R651-218	5YR	01/07/2016	2016-3/522
	40078	R651-219	5YR	01/07/2016	2016-3/523
	40079	R651-220	5YR	01/07/2016	2016-3/523
	40080	R651-221	5YR	01/07/2016	2016-3/524
	40081	R651-222	5YR	01/07/2016	2016-3/524
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Human Services, Child and Family Services	40194 40152 39939	R512-60 R512-205 R512-301	5YR 5YR AMD	02/08/2016 01/25/2016 01/07/2016	2016-5/27 2016-4/79 2015-23/35	
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	40151	R512-43	5YR	01/25/2016	2016-4/79
	40194	R512-60	5YR	02/08/2016	2016-5/27
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Commerce, Occupational and Professional Licensing	40208	R156-73	5YR	02/11/2016	2016-5/25
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Environmental Quality, Air Quality	39995	R307-104	NEW	03/03/2016	2016-1/28
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Commerce, Occupational and Professional Licensing	39911	R156-60c	AMD	01/07/2016	2015-23/14
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Commerce, Real Estate	40041	R162-2f	AMD	02/23/2016	2016-2/11
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Money Management Council, Administration	40228	R628-13	5YR	02/26/2016	2016-6/35
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Health, Disease Control and Prevention, Epidemiology	39952	R386-702	AMD	02/11/2016	2015-24/17
Human Services, Administration	40050	R495-862	5YR	01/04/2016	2016-3/512
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Environmental Quality, Air Quality	39844	R307-312-5	AMD	02/04/2016	2015-21/46
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Environmental Quality, Air Quality	39995	R307-104	NEW	03/03/2016	2016-1/28
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